



MONDAY noon, if possible

State of Wisconsin
2005 - 2006 LEGISLATURE

30472/1
LRB-0027/1
DAK:kjf:1

2005 SENATE BILL 391

October 17, 2005 - Introduced by Senators OLSEN, MILLER, ROESSLER, DARLING, ERPENBACH, RISSER, HARS DORF, PLALE and WIRCH, cosponsored by Representatives TOWNSEND, KRUSICK, KESTELL, KRAWCZYK, HINES, GIELOW, MUSSER, HAHN, OTT, BERGEAU, SHERMAN, SEIDEL, SHERIDAN and LEHMAN. Referred to Committee on Health, Children, Families, Aging and Long Term Care.

REGENERATE

1 AN ACT *to repeal* 32.64, 51.20 (7) (d) 1. a., 51.20 (7) (d) 1. b., 51.40 (1) (h), chapter
2 880 (title), subchapter I (title) of chapter 880 [precedes 880.01], 880.01 (intro.),
3 880.01 (4), 880.01 (5), 880.01 (6), 880.03, 880.07 (1m), 880.07 (3), 880.07 (4),
4 880.075 (title), 880.08 (1) (title), 880.08 (2), 880.08 (3) (title), 880.08 (3) (e),
5 880.09 (1) (title), 880.09 (3) (title), 880.09 (4), 880.09 (5), 880.09 (7) (title),
6 880.12, 880.125, 880.13 (3), 880.15 (title), 880.15 (1m), 880.15 (2), 880.16,
7 880.173 (title), 880.173 (2), 880.175 (title), 880.19 (title), 880.19 (1) (title),
8 880.19 (2) (title), 880.19 (3) (title), 880.19 (4) (title), 880.19 (5) (title), 880.19 (5)
9 (d), 880.19 (6), 880.191 (title), 880.192, 880.21, 880.22 (title), 880.22 (1) (title),
10 880.22 (2) (title), 880.23 (title), 880.24 (title), 880.24 (1), 880.25 (title), 880.251,
11 880.26 (title), 880.295, 880.31 (title), 880.33 (title), 880.33 (2) (d), 880.33 (3),
12 880.33 (4), 880.33 (4m) and (4r), 880.33 (8) (intro.), 880.33 (8) (a), 880.34 (3),
13 880.34 (6), 880.37, 880.38 (1), 880.39 (title), subchapter II (title) of chapter 880
14 [precedes 880.60], subchapter III (title) of chapter 880 [precedes 880.61],

SENATE BILL 391

subchapter IV (title) of chapter 880 [precedes 880.75] and subchapter V (title) of chapter 880 [precedes 880.81]; **to renumber** 880.06 (title), 880.07 (1) (a), 880.07 (1) (c), 880.07 (1) (e), 880.07 (1) (f), 880.07 (1) (g), 880.13 (title), 880.13 (2) (title), 880.157 (title), 880.18 (title), 880.24 (3) (a) 1. to 3., 880.24 (3) (a) 4., 880.331 (4) (intro.), 880.331 (5) (d), 880.331 (5) (g), 880.36 (title), 880.65, 880.665, 880.675, 880.69, 880.75, 880.82, 880.825, 880.84, 880.85, 880.86, 880.865, 880.875, 880.88 and 880.885; **to renumber and amend** 51.20 (7) (d) 1. (intro.), 51.40 (2) (b) 2. a., 51.40 (2) (b) 2. b., 51.40 (2) (b) 2. c., 51.40 (2) (b) 2. d., 880.01 (1), 880.01 (2), 880.01 (3), 880.01 (7), 880.01 (7m), 880.01 (8), 880.01 (9), 880.01 (10), 880.02, 880.04 (title), 880.04 (1), 880.04 (2), 880.04 (2m), 880.04 (3), 880.05, 880.06 (1), 880.06 (2), 880.07 (title), 880.07 (1) (intro.), 880.07 (1) (b), 880.07 (1) (d), 880.07 (1) (h), 880.07 (1) (i), 880.07 (1) (j), 880.07 (2), 880.075, 880.08 (intro.), 880.08 (1), 880.08 (3) (am) (intro.), 880.08 (3) (am) 1., 880.08 (3) (am) 2., 880.08 (3) (am) 3., 880.08 (3) (am) 4., 880.08 (4), 880.09 (intro.), 880.09 (1), 880.09 (2), 880.09 (3), 880.09 (6), 880.09 (7), 880.10, 880.13 (1), 880.13 (2) (a), 880.13 (2) (b), 880.14, 880.15 (1), 880.15 (1s), 880.15 (3), 880.155, 880.157 (1), 880.157 (2), 880.17, 880.173 (1), 880.175, 880.18, 880.19 (1), 880.19 (2) (a), 880.19 (2) (b), 880.19 (3), 880.19 (4) (a), 880.19 (4) (b), 880.19 (4) (c), 880.19 (5) (a), 880.19 (5) (b), 880.19 (5) (c), 880.191 (1), 880.191 (2), 880.195, 880.215, 880.22 (1), 880.22 (2), 880.23, 880.24 (2), 880.24 (3) (title), 880.24 (3) (a) (intro.), 880.24 (3) (b), 880.245, 880.25 (1), 880.25 (2), 880.25 (3), 880.25 (4), 880.25 (5), 880.252, 880.253, 880.26 (1) (intro.), 880.26 (1) (a), 880.26 (1) (b), 880.26 (1) (c), 880.26 (2) (intro.), 880.26 (2) (a), 880.26 (2) (b), 880.26 (2) (c), 880.26 (2) (d), 880.26 (3), 880.27, 880.28, 880.29, 880.31 (2), 880.31 (3), 880.31 (6), 880.32, 880.33 (1), 880.33 (2) (a) 1., 880.33 (2) (a) 2., 880.33 (2) (a) 3., 880.33 (2) (b),

SENATE BILL 391

1 880.33 (2) (e), 880.33 (5), 880.33 (5m), 880.33 (6), 880.33 (7), 880.33 (8) (b),
2 880.33 (9), 880.331 (title), 880.331 (1), 880.331 (2), 880.331 (3), 880.331 (4) (a),
3 880.331 (4) (b), 880.331 (4) (c), 880.331 (4) (d), 880.331 (4) (e), 880.331 (4) (f),
4 880.331 (5) (intro.), 880.331 (5) (a), 880.331 (5) (b), 880.331 (5) (c), 880.331 (5)
5 (e), 880.331 (5) (f), 880.331 (6), 880.331 (7), 880.331 (8), 880.34 (title), 880.34 (1),
6 880.34 (2), 880.34 (4), 880.34 (5), 880.35, 880.36 (1), 880.36 (2), 880.38 (title),
7 880.38 (2), 880.38 (3), 880.39, 880.60, 880.61, 880.615, 880.62, 880.625, 880.63,
8 880.635, 880.64, 880.645, 880.655, 880.66, 880.67, 880.68, 880.685, 880.695,
9 880.70, 880.705, 880.71, 880.715, 880.72, 880.76, 880.81, 880.815, 880.83,
10 880.835, 880.845, 880.855, 880.87, 880.89, 880.895, 880.90 and 880.905; **to**
11 **consolidate, renumber and amend** 880.31 (1) and (7) and 880.31 (4) and (5);
12 **to amend** 6.03 (1) (a), 6.03 (3), 17.03 (6), 19.32 (1m), 29.161, 29.164 (3) (e),
13 29.171 (1), 29.173 (1), 29.182 (4m), 29.184 (6) (c) 1r., 29.184 (6) (c) 2., 29.231 (1),
14 29.235 (1), 29.512 (1), 32.05 (4), 32.06 (4), 32.06 (7), 32.075 (3) (b), 32.22 (6) (b),
15 36.27 (2) (a) 5., 40.08 (9), 45.36 (1) (b), 46.011 (intro.), 46.27 (1) (e), 46.977 (1)
16 (a), 46.977 (2) (a), 46.977 (2) (b) 1., 46.977 (2) (c) 2., 48.14 (2) (b), 48.14 (11),
17 48.345 (intro.), 48.347 (intro.), 48.62 (2), 48.831 (1), 48.831 (1m) (e), 48.977 (8),
18 48.978 (7), 49.001 (8), 49.498 (3) (a) 1., 49.498 (3) (c), 50.03 (14) (c) 8. e., 50.06
19 (2) (intro.), 50.06 (2) (c), 50.09 (3), 50.94 (2) (intro.), 50.94 (6), 51.01 (5) (a), 51.01
20 (14), 51.03 (3) (a) 6., 51.05 (2), 51.10 (8), 51.22 (4), 51.30 (4) (b) 8m., 51.30 (4) (b)
21 18. a., 51.30 (4) (b) 18. c., 51.30 (4) (b) 20. (intro.), 51.30 (4) (dm) 2., 51.30 (4) (f),
22 51.30 (5) (a), 51.30 (5) (b) 1., 51.30 (5) (e), 51.35 (7), 51.40 (title), 51.40 (1) (e),
23 51.40 (1) (f), 51.40 (1) (g) 1., 51.40 (2) (intro.), 51.40 (2) (a) 1., 51.40 (2) (a) 2.,
24 51.40 (2) (b) (intro.), 51.40 (2) (b) 1., 51.40 (2) (b) 2. (intro.), 51.40 (2) (g) 1., 51.45
25 (2) (e), 51.45 (10) (a), 51.45 (10) (c), 51.45 (13) (c), 51.45 (13) (e), 51.61 (1) (o),

SENATE BILL 391

1 51.61 (1) (w) 3., 55.02, 55.03, 55.05 (2) (d), 55.05 (5) (b) 1., 55.05 (5) (b) 2., 55.06
2 (1) (intro.), 55.06 (1) (a), 55.06 (2) (b), 55.06 (3) (c), 55.06 (4), 55.06 (5), 55.06 (6),
3 55.06 (8) (c), 55.06 (10) (c), 55.06 (14), 55.06 (17) (b), 58.05 (2), 66.0915 (1),
4 66.0915 (2), 71.07 (3m) (a) 1. e., 71.28 (2m) (a) 1. e., 71.47 (2m) (a) 1. e., 71.58
5 (1) (f), 75.03 (title), 75.521 (8), 75.521 (12) (b), 75.521 (13) (b), 88.04 (2), 88.10,
6 92.03 (4) (intro.), 93.11 (6) (a) 1., 114.135 (2), 115.76 (12) (b) 2., 115.797 (1) (c),
7 115.807 (intro.), 146.34 (1) (d), 146.81 (5), 146.82 (2) (a) 9. a., 146.82 (2) (a) 9.
8 c., 146.83 (4) (b), 154.07 (2), 154.13 (2) (c), 155.05 (1), 155.60 (1), 155.60 (2),
9 155.65 (2) (c), 179.65, 180.0103 (11), 181.0103 (14), 186.10 (2), 214.37 (4) (k) 1.,
10 215.14 (9) (title), 215.26 (8) (e) 1., 223.03 (6) (intro.), 223.10, 243.07 (3) (a),
11 243.07 (3) (b), 252.15 (2) (a) 4. a., 252.15 (2) (a) 4. b., 252.15 (2) (bm) (intro.),
12 252.15 (5) (a) 15., 253.10 (3) (c) 7., 343.31 (title), 343.31 (3) (a), 403.308 (1),
13 565.30 (2), 609.65 (1) (intro.), 628.10 (1), 705.04 (2), 706.03 (4), 706.09 (1) (f),
14 753.30 (1), 757.48 (1) (a), 757.48 (3), 757.69 (1) (h), 758.19 (6) (a), 758.19 (6) (d)
15 1., 758.19 (6) (d) 2., 765.11 (1), 766.51 (7), 767.29 (3) (a), 786.01, 786.02, 786.03,
16 786.04, 786.05, 786.06 (intro.), 786.06 (1), 786.06 (2), 786.07, 786.08 (1) (a),
17 786.08 (1) (b), 786.08 (2), 786.10, 786.13, 786.14, 786.15, 786.16, 786.17 (1),
18 786.18 (1), 786.19, 786.20, 786.21, 786.25 (1), 786.25 (2), 786.25 (3), 801.11 (2)
19 (intro.), 801.11 (2) (b), 802.10 (1), 803.01 (3) (title), 803.01 (3) (a), 803.01 (3) (b)
20 2., 803.01 (3) (b) 3., 803.01 (3) (b) 4., 803.01 (3) (b) 5., 803.01 (3) (b) 6., 803.01
21 (3) (c) (title), 803.01 (3) (c) 2. (intro.), 803.01 (3) (c) 2. a., 803.01 (3) (c) 2. b., 803.10
22 (2), 804.02 (1) (b), 806.04 (4) (intro.), 807.10 (title), 807.10 (1), 807.10 (2), 807.10
23 (3), 807.13 (2) (intro.), 808.075 (4) (f) (intro.), 808.075 (4) (f) 1., 808.075 (4) (f) 2.,
24 808.075 (4) (f) 3., 808.075 (4) (f) 4., 808.075 (4) (f) 5., 808.075 (4) (f) 6., 808.075
25 (4) (f) 7., 808.075 (4) (f) 8., 808.075 (4) (f) 9., 808.075 (4) (f) 11., 808.075 (4) (f) 12.,

SENATE BILL 391

receipt and acceptance
of foreign guardianships ;

808.075 (4) (f) 13., 813.12 (5) (d), 813.123 (3) (b) 1., 814.61 (12) (a) 1., 814.66 (1)
(b) 2., 814.66 (1) (m), 842.25, 851.72 (2), 851.72 (3), 851.73 (1) (a), 854.08 (5)
(title), 854.13 (2) (f), 854.17, 857.15, 860.13, 862.03 (title), 862.03 (1), 862.03 (4),
863.43, 863.45, 865.02 (1) (b) 1., 865.03 (1), 867.03 (1c), 878.07 (4), 879.09,
879.11, 879.13, 879.15 (1), 879.19, 879.23 (1), 879.23 (4) (a), 879.23 (4) (c),
879.23 (5), 879.26, 879.27 (4), 879.27 (5), 879.57, 885.17, 905.04 (4) (a), 905.04
(4) (am), 938.02 (20m) (a) 5., 938.345 (1) (e), 949.04 (1) (b), 950.02 (4) (a) 5.,
968.20 (1m) (a) 1. and 992.08; **to repeal and recreate** 51.40 (2) (f); and **to**
create 29.024 (2u), 50.02 (2) (ad), 51.01 (4g), 51.01 (4r), 51.01 (14t), 51.20 (13)
(g) 4., 51.40 (1) (em), 51.40 (1) (hm), 51.40 (1) (m), 51.40 (2) (b) 2. g., 51.40 (2)
(g) 6., chapter 54, 55.01 (1v), 55.01 (6t), 55.01 (6v), 55.06 (3) (d), 55.14, 55.19,
55.195 (7), 55.195 (9), 155.40 (2m), 243.10 (7) (c), 343.06 (1) (L), 343.31 (2x),
440.121 and 814.66 (1) (n) of the statutes; **relating to:** guardianships,
conservatorships, and wards; involuntary administration of psychotropic
medication; protective placements and protective services; powers of attorney
for health care; durable powers of attorney; venue, residence, and county of
responsibility; requiring the exercise of rule-making authority; and providing
a penalty.

*Analysis by the Legislative Reference Bureau***CURRENT GUARDIANSHIP LAW**

Current guardianship law specifies standards and procedures for determinations by courts that certain individuals are proper subjects for guardianship or conservatorship because of incompetency, spendthriftiness, or minority. For such an individual, after presentation of evidence in a hearing, the court may approve a petition for guardianship and appoint a guardian of the person or guardian of the estate, or both, may dismiss the petition, or, for small estates, order that certain payments be made on behalf of the individual without appointment of a guardian. A court may consider a petition for appointment of a temporary guardian

SENATE BILL 391

and, after presentation of evidence in a hearing, appoint a temporary guardian for a period not to exceed 60 days or may consider a petition for limited guardianship of property and, after presentation of evidence in a hearing, appoint such a limited guardian of property. As an alternative to guardianship, a court may after presentation of evidence in a hearing, appoint a conservator for an adult who feels unable to manage his or her own property and has applied for a conservatorship. No adult may be protectively placed or receive protective services unless he or she has been determined incompetent under the guardianship laws.

DETERMINATION OF INCOMPETENCE AND APPOINTMENT OF GUARDIAN***Jurisdiction and venue; county of residence****substitute amendment*

Currently, the circuit courts have jurisdiction over all petitions for guardianship; petitions must be directed to the circuit court of the county of residence of the proposed ward or of the county in which the proposed ward is physically present. For nonresidents, the petition may be directed to the circuit court of a county in which the nonresident or his or her property may be found. The court in which a petition is first filed must determine venue for a nonresident.

This bill also permits a petition for guardianship to be directed to the county in which the petitioner proposes that the proposed ward reside.

Under current law, for purposes of determining responsibility for funding the provision of social services, mental health and alcohol and other drug abuse services, and protective placements and protective services, the county of residence of individuals aged 18 or older with developmental disability or chronic mental illness in state facilities or nursing homes is determined under numerous criteria. As an exception to these criteria, the individual's county of residence is that of his or her guardian if the individual is incapable of indicating intent and has a parent or sibling who serves as his or her guardian or if the individual's guardian states that the individual is expected to return to the guardian's county of residence when the purpose of entering the state facility or nursing home has been accomplished or when needed care and services can be obtained in the guardian's county of residence. An individual, an interested person on his or her behalf, or a county may request that the Department of Health and Family Services (DHFS) make a determination of the county of responsibility of the individual. The decision is binding on the individual and on any county that received notice of the proceeding. Currently, under the laws relating to protective placements and protective services, a petition for appointment of a guardian and for protective services or protective placement for an individual must be filed in the county of residence of the individual to be protected. Currently, under the laws relating to guardianship, all petitions for guardianship must be directed to the circuit court of the county of residence of the proposed ward or of the county in which the proposed ward is physically present. For a nonresident, the petition may be directed to the circuit court of any county in which the nonresident or his or her property may be found. The court in which the petition is first filed must determine venue and must order the record certified to the proper court in another county if it is determined that venue lies in that county. If a guardian or a ward changes residence to another county, the circuit court for the county in which the

SENATE BILL 391*Substitute amendment*

ward resides may appoint a new guardian and may order the guardianship accounts settled and the property delivered to the new guardian.

X With respect to determining a county of residence, the ~~bill~~ clarifies that a determination may be made for adults with developmental disabilities, serious and persistent mental illnesses, degenerative brain disorders, or other like incapacities who reside in any place, other than a hospital that is licensed, registered, certified, X or approved by DHFS or a county under certain laws. The ~~bill~~ also clarifies that a court that issues an order for involuntary commitment or protective placement or protective services may, after notice and an opportunity for affected counties and parties to be heard have been provided, make a specific finding of a county of residence. If an affected county or party objects, the county or party may request that DHFS make a determination and a transfer of venue may be suspended until the X determination of DHFS is final. The ~~bill~~ modifies the criteria for determining a county of residence and authorizes a guardian to declare a county of residence under X certain circumstances. The ~~bill~~ requires that the county that is determined to be the county of residence reimburse any other county, under specified time limits, for all social services, mental health, alcohol and other drug abuse, protective placement, and protective services care, treatment, and services.

X For laws relating to protective placements or protective services and to guardianship, the ~~bill~~ modifies requirements for filing a petition for protective placement or protective services or guardianship to require filing either in the county of residence or, under certain circumstances, where the individual to be protected is physically present. If a person has not previously received services or has established residence in a different county after receiving and terminating services, the court may determine the individual's county of residence. The ~~bill~~ also requires that the court in which a petition for protective placement or protective services is first filed determine venue, after notice to and an opportunity to be heard by potentially affected counties. If an affected county or party objects to the court's determination, the court may refer the issue to DHFS for determination and may suspend ruling on a motion for change of venue until the DHFS determination is final.

Petition for guardianship*Substitute amendment*

Currently, any person may petition for the appointment of a guardian for an individual. Each petition must state certain information about the individual. If the petition alleges that the individual is not competent to refuse psychotropic medication, the petition must also allege certain matters concerning the necessity for involuntary administration of psychotropic medication.

X The ~~bill~~ eliminates the petition requirements concerning the involuntary administration of psychotropic medication. The ~~bill~~ requires that certain additional X information be included in a petition for guardianship, including whether the proposed ward is a recipient of a public benefit, the agent under any power of attorney for health care or financial power of attorney executed by the proposed ward, and whether a full or limited guardian is requested and, if limited, the specific guardian authority or limitation on the ward's rights that is sought.

SENATE BILL 391*Substitute amendment****Examination of proposed ward***

Under current law, when a guardian is proposed to be appointed for a ward on the ground of alleged incompetency, a physician or psychologist, or both, must furnish a written statement, based on an examination, concerning the proposed ward's mental condition. The proposed ward must be informed that his or her statements may be used as a basis for a finding of incompetency and for an order for protective services, including the involuntary administration of psychotropic medication, and that he or she may remain silent. The statement must be provided to the proposed ward and his or her guardian ad litem and attorney.

The ~~bill~~ requires that the physician or psychologist examining the proposed ward furnish a report, instead of a statement, stating his or her professional opinion regarding the presence and likely duration of any medical or other condition causing the proposed ward's incapacity. The petitioner must provide a copy of the report to the petitioner's attorney, if any, as well as to the proposed ward and his or her counsel and guardian ad litem. Either the guardian ad litem or the physician or psychologist must inform the proposed ward that, absent a court order, he or she may refuse to participate in the examination. The court must consider the recency of any such report in determining its accuracy and the weight to be given to it. The ~~bill~~ also authorizes submitting a petition to the court to order the proposed ward to submit to an examination and permits access by the physician or psychologist to the proposed ward's patient health care records and mental health treatment records.

Notice*Substitute amendment*

Current law specifies differing requirements for provision of notice, time limits for service of notice, and required recipients of notice for the appointment of a guardian for an individual on the basis of incompetency, spendthriftiness, and minority.

The ~~bill~~ requires that a notice be in writing and specifies requirements and standards for the giving of notice. The ~~bill~~ requires that, for all notices of proposed guardian appointment on the basis of incompetency or spendthriftiness, or for rehearings, the petitioner provide notice to the proposed ward and existing guardian, if any, and to the proposed ward's counsel, guardian ad litem, presumptive adult heirs, any agent under a financial power of attorney or power of attorney for health care, custodian, and proposed guardian; any agency, charity, or foundation from which the proposed ward is receiving aid or assistance; and any other person required by the court. Special requirements apply for notice of hearing for the proposed guardianship of a minor and to a notice and hearing for temporary guardianships.

Appointment of guardian ad litem

Currently, a court must appoint a guardian ad litem when appointment of a guardian on the ground of incompetency is proposed, to protectively place or provide protective services to an individual or review a protective placement or protective services order, or to terminate a protective placement. An interested party in a proceeding, who appears as counsel in a proceeding, or who is a relative or representative of an interested person, may not be appointed as guardian ad litem in that proceeding. A guardian ad litem has numerous duties, including

SENATE BILL 391*Substitute amendment*

interviewing the proposed ward and explaining the hearing procedure, right to counsel, and right to request or continue a limited guardianship; advising the proposed ward of his or her rights; and presenting evidence concerning the proposed ward's best interests.

X The bill expands the circumstances under which a court must appoint a guardian ad litem to include whenever a petition is brought for appointment of a guardian, to review the scope of guardianship, to expand an order of guardianship, X to review incompetency and terminate a guardianship, and to review the conduct of X a guardian, and any other time that a court determines it necessary. The bill expands the prohibition on appointment of an interested person, as defined in the bill, or a X relative or representative of an interested person, from appointment as guardian ad litem in any proceeding that involves the same ward. The bill also expands duties of the guardian ad litem, including requiring that the guardian ad litem interview the proposed guardian, any proposed standby guardian, and any other person seeking appointment as guardian and report to the court concerning the fitness of each individual interviewed; review any power of attorney for health care or financial power of attorney executed by the proposed ward and any other advance planning for financial and health care decision making of the proposed ward; interview any agent under such a power of attorney; inform the court if the proposed ward or ward requests representation by counsel; and attend all court proceedings related to the guardianship.

Rights of the proposed ward

Currently, a proposed ward has the right to counsel, the right to a trial by jury if requested at least 72 hours before the hearing, the right to present and cross-examine witnesses, the right to receipt of the physician's or psychologist's report 96 hours in advance of the hearing, and the right to secure an independent medical or psychological evaluation. A court must appoint a guardian ad litem and require attorney representation if requested, if the involuntary administration of psychotropic medication is proposed, if the proposed ward is opposed to the guardianship, or if the interests of justice require it. If a guardian is appointed, a court may allow payment of reasonable expenses incurred by the ward in contesting the appointment.

Substitute amendment

X The bill expands these rights to wards (for reviews of guardianships and other X matters) and provides to the proposed ward or ward the rights to be present at any X hearing regarding the guardianship and to have any such hearing conducted in a location and manner that is accessible to the proposed ward. The bill allows a request for a jury trial to be made at least 48 hours before a hearing. The bill clarifies that expenses incurred by the ward in contesting the appointment are payable from the ward's income or assets before other attorney or guardian ad litem fees.

Appointment of guardian; determination of incompetence

Under current law, a court may appoint a guardian to have care, custody, and control of, or to manage the estate of, an individual who is determined by the court to be incompetent, a spendthrift, or a minor. The standard for a finding of incompetency includes substantial incapability of managing one's property or caring for oneself by reason of infirmities of aging, developmental disabilities, or other like

SENATE BILL 391

Substitute amendment

incapacities; physical disability without mental incapacity is insufficient to establish incompetence.

The bill changes the standard for a finding of incompetence and appointment of a guardian of the person or a guardian of the estate, or both, for an individual, to authorize the finding and appointment only if the court finds, by clear and convincing evidence, that the individual is aged at least 17 years and nine months; that (for purposes of appointment of a guardian of the person) because of an impairment, as defined in the bill, the individual is unable effectively to receive and evaluate information or to make or communicate decisions to such an extent that the individual is unable to meet the essential requirements for his or her physical health and safety; and that (for purposes of appointment of a guardian of the estate) because of an impairment, the individual is unable effectively to receive and evaluate information or to make or communicate decisions related to management of his or her property or financial affairs, to the extent that the property will be dissipated, the individual is unable to provide for his or her support, or the individual is unable to prevent financial exploitation. Further, the individual's need for assistance in decision making or communication must be unable to be met effectively and less restrictively through appropriate and reasonably available training, education, support services, health care, assistive devices, or other means that the individual will accept. Unless the proposed ward is unable to communicate decisions effectively in any way, this determination may not be based on mere old age, eccentricity, poor judgment, or physical disability.

The bill requires that, in appointing a guardian, declaring incompetence of the individual to exercise certain rights, or in determining the powers that are appropriate for a guardian to exercise, the court consider numerous matters, including the guardian ad litem report; the medical or psychological report and any other evaluation; whether the proposed ward has engaged in any advance planning for financial and health care decision making; whether appointment of a guardian is the least restrictive means, as defined in the bill, to provide for the individual's need; and the preferences of the individual with regard to personal needs or property management. The court also must determine if additional medical, psychological, social, vocational, or educational evaluation is necessary to make an informed decision concerning the individual's competency to exercise legal rights. The court must authorize a guardian to exercise only necessary powers and to exercise them in a manner that is appropriate and that constitutes the least restrictive form of intervention.

Exceptions to appointment of guardian

Currently, if a minor or an individual who is found incompetent is, except for his or her incapacity, entitled to have personal property of \$10,000 or less, a court, without requiring the appointment of a guardian, may order the property be deposited in a bank or other financial institution or invested, make payment to the natural guardian or person having custody of the minor, make payment to the minor, or make payment to the person with actual or legal custody of the individual found incompetent or to the person providing for the care and maintenance of the individual found incompetent. Similar provisions apply for possession by a minor or

INS ANAL 10

SENATE BILL 391

use 5 times

Substitute amendment

X individual found incompetent of \$5,000 or less from an estate. The bill increases to \$20,000 the dollar limitation on personal property for these types of dispositions.

Nomination of guardian

Currently, a court must consider nominations for guardian that are made by any interested person, by a minor over 14 years, by a parent in a will, and by an individual for himself or herself in an anticipatory document. The court must also consider the opinions of an individual who is alleged to be incompetent and of the members of the individual's family, potential conflicts of interest, the appointment of an individual's agent under a power of attorney for health care, and whether a nonprofit corporation is qualified to serve as guardian. The court must appoint one or both parents, if suitable and willing, of a minor or person with developmental disabilities or other like incapacity. No person, except a nonprofit corporation, may accept guardianship of the person of more than five adult wards who are unrelated to the person, unless, up to a limit of ten, the additional guardianships are approved by DHFS under rules promulgated by DHFS under the laws relating to protective placement.

X The bill requires, unless the court finds that the appointment is not in the proposed ward's best interests, that the court appoint, as guardian of the estate, an agent under a proposed ward's financial power of attorney; as guardian of the person, the agent under a proposed ward's power of attorney for health care; and as guardian, one or both parents of a minor, or an individual with developmental disability or with serious and persistent mental illness, as defined in the bill. The bill limits the power of a parent to nominate by will a guardian of the person or guardian of the estate for the parent's minor child if the court finds that the appointment is not in the minor's best interests. A private nonprofit corporation or an unincorporated association that is approved by the court may be appointed as guardian if no suitable individual is available and if DHFS, under rules promulgated under the guardianship laws, finds the corporation or association suitable. The bill limits the number of adult wards for whom an individual may have guardianship to five adult wards who are unrelated to the individual, unless the limitation is waived by a court, and eliminates restrictions on the number of adult wards for which a nonprofit corporation or unincorporated association may accept guardianship. At least 96 hours before the hearing the proposed guardian must submit to the court a sworn and notarized statement as to whether, among other things, the proposed guardian is currently charged with or has been convicted of a crime, has filed for or received protection under the federal bankruptcy laws, has had a professional license suspended or revoked, or is listed on the caregiver abuse registry.

Hearing

X Under current law, a hearing on a petition for guardianship must be open unless the proposed ward or his or her counsel moves that it be closed. If closed, only certain persons may be present.

X This bill requires that each hearing under the guardianship laws be closed unless the proposed ward or his or her counsel moves that it be open. The bill requires that petitions for guardianship, except for temporary guardianship and petitions for protectively placed individuals in certain facilities, be heard within 90

Substitute amendment

SENATE BILL 391

days after they are filed; that court determinations of incompetency or spendthriftiness be made by clear and convincing evidence; that the proposed guardian and any proposed standby guardian be physically present at the hearing unless excused by the court or unless the court permits their attendance by telephone; and that an adult proposed ward attend the hearing unless the guardian ad litem, under certain standards, waives attendance. If the proposed ward is unable to attend the hearing because he or she resides in a facility or because of physical inaccessibility or a lack of transportation, and the proposed ward, guardian ad litem, advocate counsel, or other interested person so requests, the court must hold the hearing in a place where the proposed ward may attend. A court that finds a proposed guardian to be inappropriate must require another petition proposing a suitable guardian, set a date for a subsequent hearing, and require the guardian ad litem to investigate the suitability of a new proposed guardian.

Disposition of petition

substitute amendment

X Currently, if a proposed ward has executed a power of attorney for health care, the court, in a determination of incompetency, may find that the power of attorney should remain in effect and, if so, must limit the power of the guardian from making health care decisions for the ward that the agent under the power of attorney may make, unless the guardian is also the agent. The ~~bill~~ requires that such a health care power of attorney remain in effect and permits a court to revoke it or limit the power of the agent only for good cause shown. Unless the court makes a revocation or limitation, the guardian is prohibited from making health care decisions for the ward that may be made by the agent.

X Currently, when a guardian is appointed, the court must award from the ward's estate payment of the petitioner's reasonable attorney fees and costs, including those related to protective placement, unless the court finds it inequitable to do so after considering the petitioner's interest in the matter, including a conflict of interest, the ability of the ward's estate to pay the fees and costs, whether the guardianship was contested, and any other relevant factor. This award may not be made if the ward had engaged in advance planning (by, among other things, executing a financial power of attorney) to avoid guardianship. The ~~bill~~ eliminates payment, from the ward's income and assets, of the costs of a protective placement and changes a finding that the ward had engaged in advance planning for financial health care decision making to be a factor in awarding payment of the petitioner's reasonable attorney fees and costs, rather than a prohibition on that payment.

X Currently, the court may require a bond from the person appointed guardian of the estate of a ward and may require a "blanket bond" from a county institutional employee who is appointed a guardian for numerous residents of county facilities. The ~~bill~~ requires that the court order specify the bond amount, prohibits requiring a bond for the guardian of the person of the ward, and eliminates the authority to require "blanket bonds."

X The ~~bill~~ clarifies the grounds under which a court must dismiss a petition for guardianship. If a guardian is appointed, the ~~bill~~ specifies the joint decision making powers of any coguardians appointed; specifies that any financial power of attorney executed by the proposed ward remains in effect unless, only for good cause shown,

SENATE BILL 391

if a guardian is not appointed,

it may be revoked or the agent's powers limited, and prohibits the guardian from making decisions for the ward that may be made by the agent; specifies that the ~~county in which the action is pending for the guardianship proceeding is the county that is~~ liable for guardian ad litem fees and specifies circumstances in which the ~~proposed ward is not liable for fees due to his or her legal counsel.~~

Involuntary administration of psychotropic medication

Under current law relating to guardianship, a petition for appointment of a guardian may allege that the proposed ward is not competent to refuse psychotropic medication and that the medication is, under several criteria, necessary as a protective service. "Not competent to refuse psychotropic medication" is defined to mean that, because of chronic mental illness and after advantages and disadvantages of and alternatives to accepting psychotropic medication have been explained to an individual, he or she is incapable of expressing an understanding of the advantages and disadvantages or is substantially incapable of applying an understanding of the advantages, disadvantages, and alternatives in order to make an informed choice about acceptance or refusal. If, at hearing, the court finds that the individual is not competent to refuse psychotropic medication and that the medication is necessary, the court must appoint a guardian to consent to or refuse the medication on behalf of the individual and order development of a treatment plan for the person. The relevant county department must at least annually review and evaluate the individual's status and, if appropriate, recommend discharge or change in the treatment plan. The court also must annually appoint a guardian ad litem to review the county department's evaluations, inform the individual and his or her guardian of certain rights, and file a report with the court. The court must order an independent evaluation and a hearing to continue, modify, or terminate the guardianship, if requested or on the court's own motion. If the individual substantially fails to comply with the treatment plan and if certain conditions are met, the court may authorize the guardian to consent to the involuntary administration of psychotropic medication to the individual. *petitioner is of the proposed ward's*

For purposes of the guardianship laws, the ~~bill~~ defines "psychotropic medication" and establishes a standard for the power of a guardian to give informed consent (subject to the power of an agent under any power of attorney for health care of the ward) to the ward's voluntary receipt of psychotropic medication. *Substitute amendment*

The ~~bill~~ clarifies that a guardian may consent to the involuntary administration of psychotropic medication only under a court order under the laws relating to protective placement and protective services. Under these laws, the ~~bill~~ establishes an exclusive procedure for involuntary administration of psychotropic medication as a protective service to an individual who has been protectively placed. Under this procedure, a petition for involuntary administration of psychotropic medication must meet all requirements for a protective services petition and also allege the condition, past behavior, and numerous other matters relating to the individual's competence to refuse psychotropic medication. A guardian ad litem must be appointed for the individual and must report to the court his or her conclusions concerning the allegations, and the court must appoint legal counsel on behalf of the individual. If requested, the individual may have an independent

SENATE BILL 391*substitute amendment*

medical or psychological evaluation that is relevant to his or her competency to refuse the medication, the truth of the petition's allegations, and whether involuntary administration is in the individual's best interests. After hearing, the court may authorize a guardian to consent to involuntary administration of psychotropic medication to a ward as a protective service, if the court or jury finds that, by clear and convincing evidence, the requirements for the involuntary administration are met. If the court issues such an order, the order must specify the methods of involuntary administration to which the guardian may consent; require the presence of certain medical personnel when administered; require the maintenance of records concerning the methods of administration used; and require development of a treatment plan. The ~~bill~~ specifies procedures for noncompliance with the order, requires annual review of the order, and requires performance of annual review of the status of the individual by the relevant county department. Further, the ~~bill~~ requires the court to appoint a guardian ad litem after receipt of the annual county department report and specifies responsibilities of the guardian ad litem with respect to the ward. The ~~bill~~ requires the court that issued the order for involuntary administration of psychotropic medication annually to review reports of the county department and the guardian ad litem and order either a summary hearing or full due process hearing, after which the court must terminate, modify, or order continuation of the order.

Duties and powers of a guardian; limitations

Currently, no guardian may lend guardianship funds to himself or herself and a guardian is limited in purchasing property of the guardian's ward. A guardian must pay just debts of the ward from the ward's estate and its income.

The ~~bill~~ specifies in detail numerous powers and duties of a guardian (either a guardian of the person or a guardian of the estate) and clarifies that a guardian's powers are limited to those authorized by statute or court order, that a ward retains all rights that are not assigned to the guardian or otherwise limited by statute, and that a guardian's powers are limited to those necessary to provide for the personal needs or property management of the ward in a manner that is appropriate to the ward and that constitutes the least restrictive form of intervention. Under the ~~bill~~, a guardian may not lend the ward's funds to another unless the court first approves the terms, rate of interest, and any requirement for security, and may purchase property of the ward only at fair market value and with the approval of the court. The requirement to pay legally enforceable debts of the ward, including by filing tax returns and paying taxes owed is, under the ~~bill~~, made a duty of a guardian of the estate.

Duties and powers of a guardian of the estate

Currently, although the title to the ward's estate remains the ward's, the guardian of the estate must take possession of and protect and preserve the ward's property; rents, income, and other benefits from the property; and any proceeds arising from the sale or other actions to the property. The ~~bill~~ specifies numerous duties of the guardian of the estate, and requires that the guardian of the estate, after following any applicable requirements concerning petitioning the court for the authority to sell, mortgage, pledge, lease, or exchange the ward's property, perform

SENATE BILL 391

Substitute amendment

these duties so as to provide the ward with the greatest amount of independence and self-determination with respect to property management in light of the ward's functional level, understanding, and appreciation of his or her functional limitations and in light of the ward's personal wishes and preferences.

Currently, in exercising powers, the guardian of the estate must use the judgment and care exercised by persons of prudence, discretion, and intelligence in the management of their own affairs. Currently, after submittal of a petition and under court order, assets of a ward may be transferred to the trustee of an existing revocable living trust for the benefit of the ward or dependents or to the trustee of a trust for the benefit of a minor ward or, if the minor dies, to his or her estate. A guardian of the estate appointed for a married ward may exercise, with court approval, management and control rights over marital or nonmarital property and the ward's business affairs, join in a transaction for which joinder of both spouses is required, or execute a marital property agreement, but not make, amend, or revoke a will. The guardian of the estate may also, if specified in the court's order, continue the business of a ward, and may apply to the court for adjustment of claims of the ward. The guardian of the estate may, with court approval, retain real or personal property of the ward or that the ward acquires by gift or inheritance. The guardian of the estate may, without court approval, do numerous things on behalf of the ward, including entering into contracts and applying for public and private benefits.

The ~~bill~~ requires that the guardian of the estate, in exercising powers, consider, consistent with the functional limitations of the ward, the ward's understanding of the harm that he or she is likely to suffer as the result of his or her inability to manage property and financial affairs, the ward's personal preferences and desires, and the least restrictive form of intervention for the ward. The ~~bill~~ requires that certain actions specified in current law and numerous others specified in the ~~bill~~ may be performed by the guardian of the estate with respect to the ward's income and assets only with the court's prior written approval following any petition and upon any notice and hearing that the court requires. Further, the ~~bill~~ specifies a detailed procedure that a guardian of the estate must follow in order to transfer any of a ward's assets to or for the benefit of another person. The ~~bill~~ also specifies numerous powers, in addition to those in current law, which the guardian of the estate may perform without first receiving the court's approval.

Duties and powers of guardian of the person*Substitute amendment*

Under current law, a guardian of the person of a ward must annually report on the ward's condition to the court and the relevant county department, and must endeavor to secure necessary care or services on behalf of the ward. If a court finds that an individual for whom a determination of incompetency is proposed is not capable of understanding the objective of the elective process, the court may find the individual ineligible to register to vote or to vote in an election.

The ~~bill~~ requires that a guardian of the person endeavor to secure care or services that are in the ward's best interests by, among other things, regular inspection, in person, of the ward's condition, surroundings, and treatment; examination of the ward's patient health care records; and inquiry into alternatives to treatment for the ward if drastic or restrictive treatment is proposed.

ANAL
15

SENATE BILL 391*Substitute amendment*

X The bill specifies that a guardian of the person has only those rights and powers that he or she is specifically authorized to exercise by statute, rule, or court order; any other right is retained by the ward, unless the ward has been declared by a court incompetent to exercise a right or the guardian of the person has been authorized by X a court to exercise certain rights usually retained by the ward. The bill specifies numerous rights that are retained by individuals who are determined incompetent, specifies a proceeding in which a court may find, by clear and convincing evidence, that an individual has incapacity to exercise specified rights, including the right to register to vote or vote and the right to consent to organ donation. A guardian of the person may not exercise a right on behalf of a ward who is declared not competent X to exercise that right, unless so authorized by a court. The bill specifies the standard under which a court may make this authorization, including the power to give informed consent, if in the ward's best interests, to voluntary or involuntary administration of psychotropic medication. Lastly, the bill specifies a standard that X the guardian of the person must follow in exercising powers and duties delegated to the guardian of the person by a court.

Temporary guardianships

Currently, after considering a petition, a court may appoint a temporary guardian for a ward, including for a minor for a medical purpose, for 60 days and may extend the order for one additional 60-day period. The temporary guardian may perform duties concerning specific property or as ordered by the court. Statutory provisions concerning the powers and duties of guardians apply, except as limited by the court's order. The temporary guardian must report as directed by the court, account to the court at the termination of the temporary guardianship, and deliver the ward's estate to those entitled to it. Duties and powers of a temporary guardianship cease upon the appointment of a guardian, when a minor for whom a temporary guardianship attains the age of 18, or if the court determines that the ward's situation that was the cause of the temporary guardianship has ended.

X The bill establishes a standard for the appointment of a temporary guardian; establishes procedures for appointment of a temporary guardian, including appointment of a guardian ad litem; provides for a rehearing on the issue of appointment of the temporary guardian, if requested; clarifies the duration of the temporary guardianship and the authority of the temporary guardian; and prohibits the temporary guardian from selling real estate or expending more than \$2,000 unless authorized by the court.

Standby guardianships

Under current law, a person may at any time bring a petition for the appointment of a standby guardian of the person or estate of a minor or an individual found incompetent, to assume the duty and authority of guardianship on the death, incapacity, or resignation of the guardian. If appointed, the standby guardian has the powers and duties of the guardian and must notify the court upon assuming office.

X The bill clarifies that a standby guardian of the person may be appointed for a spendthrift and that appointment of a standby guardian is effective upon the unwillingness or inability to act, resignation, or court's removal of the guardian, or

Substitute amendment

SENATE BILL 391*Substitute amendment*

during a period when the guardian is temporarily unable to fulfill his or her duties, including during an extended vacation or illness. Under the ~~bill~~, when a standby guardianship takes effect, the court must issue new letters of guardianship that specify that the standby guardianship is permanent or that specify the time period for a limited standby guardianship.

Termination of limited guardianship of property

Currently, upon petition, in a procedure separate from appointment of a guardian, a court may appoint a limited guardian of property, under which the limited guardian receives, manages, disburses, and accounts for property of the ward. Unless limited by a court, an adult ward under a limited guardian of property may receive and expend wages and other earnings and may contract under certain circumstances.

This ~~bill~~ eliminates the appointment of a limited guardian of property as a procedure separate from appointment of a guardian.

POST-APPOINTMENT MATTERS***Inventory***

Currently, when a guardian of the estate is appointed, an inventory must be made of the ward's property under the same requirements as for the inventory of the estate of a decedent. The guardian of the estate must by oath verify that the inventory includes all the ward's property; the court may examine the guardian of the estate as to the inventory or any supposed omission. A court may order a guardian who neglects to file an inventory to do so.

The ~~bill~~ establishes requirements for information that the inventory must provide with respect to each asset of the ward and the time by which the guardian of the estate must file the initial inventory, specifies persons to whom the guardian of the estate must provide copies of the inventory and the fee due when the inventory is filed, and authorizes the court to order that the guardian of the estate appraise any or all of the ward's income and assets.

Accounts

Currently, every guardian except a corporate guardian must annually, before April 15, as specified by court order, or at any other time required by a court, file an account specifying the amount of the ward's property received and held or invested, the nature of the investment, receipts and expenditures, and any change in status of the surety on the guardian's bond. The guardian must produce for the court evidence of the ward's securities, deposits, and other investments. If the account is unsatisfactory, the court may appoint a guardian ad litem for the ward. The court may order any person entrusted by the guardian with part of the ward's estate to appear and render an account. Action by a court on an account is final only if notice is provided. If a guardian fails to file an account, the court may order the guardian to show cause for the failure and may issue a warrant. The guardian may be fined \$50, or imprisoned up to 10 days, or both, if the court finds that failure, refusal, or neglect to file an account under court order is willful or inexcusable.

The ~~bill~~ makes exceptions to the requirement for annual submittal of an account, for waiver by a court, or for income and assets of a ward that do not exceed

ANAL
17

SENATE BILL 391*Substitute amendment*

X \$20,000; the guardian must notify the court if the ward's income and assets exceed this amount. The bill eliminates the exception from filing for corporate guardians.
X The bill creates special requirements for annual accounts of married wards. Under
X the bill, an action by a court on an account is final only if the guardian first provides notice to the ward, any guardian ad litem of the ward, and any personal representative or special administrator of the estate of a deceased ward. For a guardian who fails to file the account as required by law or as ordered by the court, the court must direct that a copy of the court's order to the guardian to show cause be served on the guardian at least 20 days before the court-ordered court appearance date. The bill also increases the fine for guardian failure, refusal, or neglect to \$250.

Procedure to expand an order of guardianship

X The bill creates a procedure by which a guardian or other person may submit to a court a request for removal of rights from a ward and transfer of powers to the guardian in addition to those specified in the order of appointment. If, after notice is provided, no objection is submitted, the court may amend the order, but if an objection to the request is submitted, the court must hold a hearing for review of the ward's incompetency.

Review of incompetency and general termination of guardianship

Currently, a guardianship of an individual who is found incompetent continues during the life of the ward or until terminated by the court. Guardianship of a minor who is found incompetent is reviewed when the minor attains age 18. The court must conduct a hearing, including a jury trial if requested, if an adult ward or his or her guardian petitions for a review of incompetency. After a hearing or on its own motion, a court may terminate or modify the ward's guardianship. Termination of guardianship of the person occurs when a formerly minor ward attains age 18, unless the minor was found incompetent; a minor marries; or the court determines that the ward is competent. Termination of guardianship of the estate occurs under these same grounds and if the ward dies. In addition, the court may terminate a guardianship for a ward whose estate is depleted to below \$5,000 if it is to the advantage of the ward to do so. For property of a nonresident ward in the possession of or due from a guardian appointed in this state, the court may, after receipt of a petition and provision of notice, order the property delivered to the ward's foreign guardian.

Substitute amendment

X For a review of a ward's incompetency, the bill specifies time limits and procedures; requires the court to appoint a guardian ad litem, fix a time and place for hearing, and designate persons entitled to notice and the manner of giving notice; and specifies the right of the ward to counsel, including at county expense if the ward is indigent. For termination of a guardianship of the person, the bill clarifies that the guardianship does not terminate on attainment of age 18 years or marriage by a minor ward if the guardianship was ordered on the grounds of incompetency; and expands the grounds for termination of a guardianship of the person or a guardianship of the estate. For a depleted guardianship, the standard for depletion is increased to \$20,000. If terminating the guardianship, the court is authorized to order the guardian to make appropriate financial arrangements for the burial or other disposition of the ward's remains. Alternatively, the court may continue the

SENATE BILL 391

guardianship, but waive requirements for a bond for the guardian and waive or require an accounting by the guardian.

Substitute amendment

Final accounts

Currently, if a court terminates a guardianship or a guardian resigns, is removed, or dies, the guardian or the guardian's personal representative must render a final account to the court, the former ward, the successor guardian, or the deceased ward's personal representative. After approval of the account and the filing of receipts, the guardian must be discharged and the guardian's bond released. The guardian of an estate of not more than \$1,000 must render an account only on termination of the guardian's guardianship or as ordered by the court. If a ward dies leaving an estate that may be settled under laws relating to summary settlement of small estates, the court may approve that summary settlement and distribution without appointing a personal representative.

X For termination of a guardianship, the bill additionally authorizes final accounting by the guardian's special administrator and rendering of the account to the ward or the deceased ward's special administrator, as appropriate. If the ward dies and the guardian and the deceased ward's personal representative or special administrator are the same person, the personal representative or special administrator must give notice of termination and rendering of the final account to all interested persons, as defined in the bill, of the ward's estate. The bill increases XX to \$20,000 the value of small estates of wards for which a final account need not be filed, unless ordered by a court, and requires the guardian to provide the court with a list of the ward's assets when the guardianship terminates, including at the death of the ward.

Review of conduct of guardian

X The bill specifies that the court that appointed a guardian has continuing jurisdiction over the guardian, establishes numerous causes for court action against a guardian, establishes procedures and notice requirements for a hearing to review X the guardian's conduct, and establishes remedies of the court. The bill authorizes a court to remove a paid guardian if changed circumstances indicate that a previously unavailable voluntary guardian is available to serve and that the change would be in the ward's best interest. The court may require the guardian to pay any costs of the proceeding to review the guardian's conduct and authorizes a ward who petitions for review to retain legal counsel and contract for the payment of fees.

Guardian compensation and reimbursement

X The bill establishes conditions under which a guardian of the person or a guardian of the estate is entitled to compensation and to reimbursement for expenses, including factors that a court must use in deciding whether compensation X is just and reasonable. The bill specifies that a court must approve compensation and reimbursement before payment is made but need not do so before charges are incurred.

Conservatorship

Under current law, any adult who believes that he or she is unable properly to manage his or her property or income may voluntarily apply to the circuit court of

SENATE BILL 391*substitute amendment*

his or her county of residence for appointment of a conservator of the estate. At a hearing for such an appointment, the court must personally examine the applicant and, if satisfied that the applicant desires a conservator and that the nominated fiduciary is suitable, appoint the conservator and issue letters of conservatorship after the nominee files a bond. A conservator has the powers and duties of a guardian of the estate, and these powers cease if the court removes the conservator or the conservatee dies. Anyone may apply for termination of the conservatorship, for which the court must hold a hearing. Unless it is clearly shown that the conservatee is incompetent, the court must remove the conservator and order the property restored. However, the court may order continuation of the conservatorship or appointment of a successor conservator. Appointment of a conservator does not constitute evidence of competency or incompetency of the conservatee.

X The ~~bill~~ authorizes an individual who is unwilling to manage his or her assets or income to apply for conservatorship and clarifies that a conservatee may make gifts of his or her assets, subject to the conservator's approval. However, if the individual has executed a financial power of attorney before conservatorship, that power of attorney remains in effect, unless revoked or limited by the court for good cause, and the conservator's authority is limited by the authority expressly granted to the agent under the power of attorney. The ~~bill~~ authorizes appointment of a standby conservator and specifies the standard for appointment of a standby conservator. X X The ~~bill~~ clarifies that a conservatorship may be terminated only by a court after hearing and specifies standards for termination. The ~~bill~~ also specifies actions by a conservator that constitute cause for his or her removal by a court. X The ~~bill~~ requires that a final account of the former conservatee's income and assets be rendered if a court terminates a conservatorship or a conservator resigns, is removed, or dies.

Other provisions*substitute amendment*

X The ~~bill~~ makes numerous additional changes to the laws related to guardianships and conservatorships.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 6.03 (1) (a) of the statutes is amended to read:

2 6.03 (1) (a) Any person who is incapable of understanding the objective of the
3 elective process or is under guardianship pursuant to the order of a court under ch.
4 880, except that when a person is under limited guardianship, unless the court may
5 determine has determined that the person is competent to exercise the right to vote;

SENATE BILL 391

SECTION 2. 6.03 (3) of the statutes is amended to read:

6.03 (3) No person may be denied the right to register to vote or the right to vote by reason that the person is alleged to be incapable of understanding the objective of the elective process unless the person has been so adjudicated in a separate proceeding instituted for that purpose by an elector of the municipality in accordance with the procedures set forth in ch. 880 for determining incompetency incompetent in this state. If a determination of incompetency of the person has already been made, or if a determination of limited incompetency has been made ~~which~~ that does not include a specific finding that the subject is competent to exercise the right to vote, and a guardian ~~or limited guardian~~ has been appointed as a result of any such determination, then no determination of incapacity of understanding the objective of the elective process is required unless the guardianship is terminated or modified under s. 880.34 54.64.

SECTION 3. 17.03 (6) of the statutes is amended to read:

17.03 (6) A competent tribunal voids the election or appointment; or adjudges the incumbent to be incapable of understanding the objective of the elective process; or places the incumbent under guardianship, ~~or under limited guardianship~~ unless the court finds that the incumbent is competent to exercise the right to vote.

SECTION 4. 19.32 (1m) of the statutes is amended to read:

19.32 (1m) "Person authorized by the individual" means the parent, guardian, as defined in s. 48.02 (8), or legal custodian, as defined in s. 48.02 (11), of a child, as defined in s. 48.02 (2), the guardian, ~~as defined in s. 880.01 (3),~~ of an individual adjudged adjudicated incompetent, ~~as defined in s. 880.01 (4) in this state,~~ the personal representative or spouse of an individual who is deceased, or any person

SENATE BILL 391

SECTION 4

1 authorized, in writing, by the individual to exercise the rights granted under this
2 section.

3 **SECTION 5.** 29.024 (2u) of the statutes is created to read:

4 **29.024 (2u) REVOCATION OF HUNTING LICENSES BASED ON INCOMPETENCY.** The
5 department shall revoke any license authorizing hunting issued to an individual for
6 whom the department receives a record of a declaration under s. 54.25 (2) (c) 1. d.
7 stating that the individual is incompetent to apply for a hunting license under this
8 chapter.

9 **SECTION 6.** 29.161 of the statutes is amended to read:

10 **29.161 Resident small game hunting license.** A resident small game
11 hunting license shall be issued subject to ~~s. ss.~~ ss. 29.024 and 54.25 (2) (c) 1. d. by the
12 department to any resident applying for this license. The resident small game
13 hunting license does not authorize the hunting of bear, deer, elk, or wild turkey.

14 **SECTION 7.** 29.164 (3) (e) of the statutes is amended to read:

15 **29.164 (3) (e) *Notification; issuance; payment.*** The department shall issue a
16 notice of approval to those qualified applicants selected to receive a wild turkey
17 hunting license. A person who receives a notice of approval and who pays the fee in
18 the manner required by the department shall be issued a wild turkey hunting license
19 subject to ss. 29.024 and 54.25 (2) (c) 1. d.

20 **SECTION 8.** 29.171 (1) of the statutes is amended to read:

21 **29.171 (1)** A resident archer hunting license shall be issued subject to ~~s. ss.~~
22 29.024 and 54.25 (2) (c) 1. d. by the department to any resident applying for this
23 license.

24 **SECTION 9.** 29.173 (1) of the statutes is amended to read:

INSERT 22-19

SENATE BILL 391

1 29.173 (1) ISSUANCE. A resident deer hunting license shall be issued subject to
2 ~~s. ss. 29.024 and 54.25 (2) (c) 1. d.~~ by the department to any resident applying for this
3 license.

4 **SECTION 10.** 29.182 (4m) of the statutes is amended to read:

5 29.182 (4m) LIMITATION OF ONE LICENSE. A person may be issued, or transferred
6 under sub. (4) (g), only one resident elk hunting license in his or her lifetime, and the
7 resident elk hunting license shall be valid for only one elk hunting season. The
8 issuance, or transfer under sub. (4) (g), of the license to the person is subject to ~~s. ss.~~
9 29.024 (2g) and 54.25 (2) (c) 1. d.

10 **SECTION 11.** 29.184 (6) (c) 1r. of the statutes is amended to read:

11 29.184 (6) (c) 1r. The department shall issue a notice of approval to those
12 qualified applicants selected to receive a Class A bear license. A person who receives
13 a notice of approval and who pays the fees required for the license shall be issued the
14 license subject to ~~s. ss. 29.024 (2g) and 54.25 (2) (c) 1. d.~~

15 **SECTION 12.** 29.184 (6) (c) 2. of the statutes is amended to read:

16 29.184 (6) (c) 2. A Class B bear license shall be issued subject to ~~s. ss. 29.024~~
17 ~~(2g) and 54.25 (2) (c) 1. d.~~ by the department to any resident who applies for this
18 license.

19 **SECTION 13.** 29.231 (1) of the statutes is amended to read:

20 29.231 (1) A resident sports license shall be issued subject to ~~s. ss. 29.024 and~~
21 ~~54.25 (2) (c) 1. d.~~ by the department to any resident who applies for this license, and
22 a nonresident sports license shall be issued subject to s. 29.024 by the department
23 to any person who is not a resident and who applies for the license.

24 ~~**SECTION 14.** 29.235 (1) of the statutes is amended to read:~~

SENATE BILL 391

SECTION 14

1 29.235 (1) ISSUANCE. A resident conservation patron license shall be issued
2 subject to s. ~~ss. 29.024 and 54.25 (2) (c) 1. d.~~ by the department to any resident 14
3 years old or older who applies for the license. A nonresident conservation patron
4 license shall be issued subject to s. 29.024 by the department to any person 14 years
5 old or older who is not a resident and who applies for the license.

6 **SECTION 15.** 29.512 (1) of the statutes is amended to read:

7 29.512 (1) No person may engage or be employed for any compensation or
8 reward to guide, direct or assist any other person in hunting, fishing or trapping
9 unless the person is issued a guide license by the department subject to s. ~~ss. 29.024~~
10 ~~and 54.25 (2) (c) 1. d.~~ No guide license for hunting or trapping may be issued to or
11 obtained by any person who is not a resident of this state. No guide license may be
12 issued to any person under the age of 18 years. The holder of a guide license shall
13 comply with all of the requirements of this chapter.

14 **SECTION 16.** 32.05 (4) of the statutes is amended to read:

15 32.05 (4) HOW NOTICE OF JURISDICTIONAL OFFER IS GIVEN. The giving of such
16 notice is a jurisdictional requisite to a taking by condemnation. Such notice may be
17 given by personal service in the manner of service of a circuit court summons, or it
18 may be transmitted by certified mail. If service is by mail, service of the papers shall
19 be deemed completed on the date of mailing and the use of mail service shall not
20 increase the time allowed to act in answer to or in consequence of such service. If such
21 owner or mortgagee is unknown or cannot be found there shall be published in the
22 county wherein the property is located a class 1 notice, under ch. 985. If such owner
23 is a minor, or an ~~incompetent person~~ individual adjudicated incompetent, the
24 condemnor shall serve such notice upon the legal guardian of such ~~the~~ minor or
25 ~~incompetent individual~~, and if there is no such guardian the condemnor shall

SENATE BILL 391

1 proceed under s. 32.15 to have a special guardian appointed to represent ~~such~~ the
2 minor or ~~incompetent individual~~ in ~~such~~ the proceeding. The reasonable fees of ~~such~~
3 any special guardian as approved by the court shall be paid by the condemnor. ~~Such~~
4 The notice shall be called the “jurisdictional offer”. The condemnor shall file a lis
5 pendens on or within 14 days of the date of service or mailing of the jurisdictional
6 offer or within 14 days of the date of publication if publication is necessary. The lis
7 pendens shall include a copy of the jurisdictional offer. From the time of such filing
8 every purchaser or encumbrancer whose conveyance or encumbrance is not recorded
9 or filed shall be deemed a subsequent purchaser or encumbrancer and shall be bound
10 by the terms of the jurisdictional offer and it shall not be necessary to serve other
11 jurisdictional offers on such subsequent purchaser or encumbrancer. In the award
12 the condemnor may name and make payment to parties who were owners or
13 mortgagees at the time of the filing of the lis pendens unless subsequent purchasers
14 or encumbrancers give written notice to the condemnor of their subsequently
15 acquired interests in which event such parties shall be named in the award as their
16 interests may appear.

17 **SECTION 17.** 32.06 (4) of the statutes is amended to read:

18 32.06 (4) RIGHT OF MINORS AND ~~INCOMPETENTS~~ INDIVIDUALS ADJUDICATED
19 INCOMPETENT. If any person having an ownership interest in the property proposed
20 to be condemned is a minor or ~~an~~ is adjudicated incompetent person, a special
21 guardian shall be appointed for the person pursuant to s. 32.05 (4).

22 **SECTION 18.** 32.06 (7) of the statutes is amended to read:

23 32.06 (7) PETITION FOR CONDEMNATION PROCEEDINGS. If the jurisdictional offer
24 is not accepted within the periods limited in sub. (6) or the owner fails to consummate
25 an acceptance as provided in sub. (6), the condemnor may present a verified petition

SENATE BILL 391**SECTION 18**

1 to the circuit court for the county in which the property to be taken is located, for
2 proceedings to determine the necessity of taking, where such determination is
3 required, and the amount of just compensation. The petition shall state that the
4 jurisdictional offer required by sub. (3) has been made and rejected; that it is the
5 intention of the condemnor in good faith to use the property or right therein for the
6 specified purpose. It shall name the parties having an interest of record in the
7 property as near as may be and shall name the parties who are minors ~~or persons of~~
8 ~~unsound mind, who are adjudicated incompetent, or whose location is~~ unknown. The
9 petition may not disclose the amount of the jurisdictional offer, and if it does so it is
10 a nullity. The petition shall be filed with the clerk of the court. Notice of the petition
11 shall be given as provided in s. 32.05 (4) to all persons having an interest of record
12 in the property, including the special guardian appointed for minors or individuals
13 adjudicated incompetent persons. A lis pendens shall be filed on the date of filing
14 the petition. The date of filing the lis pendens is the “date of evaluation” of the
15 property for the purpose of fixing just compensation, except that if the property is to
16 be used in connection with the construction of a facility, as defined under s. 196.491
17 (1), the “date of evaluation” is the date that is 2 years prior to the date on which the
18 certificate of public convenience and necessity is issued for the facility. The hearing
19 on the petition may not be earlier than 20 days after the date of its filing unless the
20 petitioner acquired possession of the land under s. 32.12 (1) in which event this
21 hearing is not necessary. If the petitioner is entitled to condemn the property or any
22 portion of it, the judge immediately shall assign the matter to the chairperson of the
23 county condemnation commissioners for hearing under s. 32.08. An order by the
24 judge determining that the petitioner does not have the right to condemn or refusing

SENATE BILL 391

1 to assign the matter to the chairperson of the county condemnation commissioners
2 may be appealed directly to the court of appeals.

3 **SECTION 19.** 32.075 (3) (b) of the statutes is amended to read:

4 32.075 (3) (b) If the person is a minor or an individual adjudicated incompetent,
5 the notice under par. (a) shall be to the special guardian appointed for the person him
6 or her. The notice under par. (a) shall state that the person, or, if the person is
7 deceased, the person's heirs, may petition the circuit court of the county in which the
8 property is located, within 90 days after receipt of the notice, for an order to require
9 the public utility to return the interest in the property to the petitioner. The circuit
10 court shall grant the petition and shall make a formal order returning the
11 petitioner's interest in the property. The order shall operate to divest any title of the
12 public utility to the property subject to the petition and to automatically discharge
13 any lis pendens filed in relation to the condemnation of the property.

14 **SECTION 20.** 32.22 (6) (b) of the statutes is amended to read:

15 32.22 (6) (b) If any owner is a minor or an individual adjudicated incompetent
16 ~~person~~, a special guardian shall be appointed under s. 32.05 (4).

17 **SECTION 21.** 32.64 of the statutes is repealed.

18 **SECTION 22.** 36.27 (2) (a) 5. of the statutes is amended to read:

19 36.27 (2) (a) 5. Any minor student under guardianship in this state pursuant
20 ~~to ch. 48 or 880~~ whose legal guardian has been a bona fide resident of this state for
21 at least 12 months next preceding the beginning of any semester or session for which
22 such student registers at an institution.

23 **SECTION 23.** 40.08 (9) of the statutes is amended to read:

24 40.08 (9) PAYMENTS OF BENEFITS TO MINORS AND INCOMPETENTS INDIVIDUALS FOUND
25 INCOMPETENT. In any case in which a benefit amount becomes payable to a minor or

SENATE BILL 391

SECTION 23

1 to ~~a person adjudged mentally~~ an individual adjudicated incompetent, the
2 department may waive guardianship proceedings, and pay the benefit to the person
3 providing for or caring for the minor, or to the spouse ~~or the~~ parent, or other relative
4 by blood or adoption providing for or caring for the individual adjudicated
5 incompetent person.

6 **SECTION 24.** 45.36 (1) (b) of the statutes is amended to read:

7 45.36 (1) (b) “Duly authorized representative” means any person authorized
8 in writing by the veteran to act for the veteran, or a legally constituted representative
9 if the veteran is adjudicated incompetent or deceased. Where for proper reason no
10 representative has been or will be appointed, the veteran’s spouse, an adult child, or,
11 if the veteran is unmarried, either parent shall be recognized as the duly authorized
12 representative.

13 **SECTION 25.** 46.011 (intro.) of the statutes is amended to read:

14 **46.011 Definitions.** (intro.) In chs. 46, 48, 50, 51, 54, 55 and 58:

15 **SECTION 26.** 46.27 (1) (e) of the statutes is amended to read:

16 46.27 (1) (e) “Voluntary” means according to ~~a person’s~~ an individual’s free
17 choice, if competent, or by choice of ~~a~~ his or her guardian, if the individual is
18 adjudicated incompetent.

19 **SECTION 27.** 46.977 (1) (a) of the statutes is amended to read:

20 46.977 (1) (a) “Guardian” has the meaning ~~provided given~~ in s. 880.01(3) 54.01
21 (10).

22 **SECTION 28.** 46.977 (2) (a) of the statutes is amended to read:

23 46.977 (2) (a) Annually, prior to April 30, an organization may apply to the
24 department for a grant under this section for the purpose of recruiting, training,
25 monitoring and assisting guardians for ~~persons determined to be~~ individuals found

SENATE BILL 391

1 incompetent under ch. 880 54. By June 30, the department shall determine which
2 organizations will receive a grant during the following fiscal year based on the
3 criteria under par. (c). No grant may be awarded unless the applicant provides
4 matching funds equal to 10% of the amount of the award. The department shall
5 make grants under this section from the appropriation under s. 20.435 (7) (cg).

6 **SECTION 29.** 46.977 (2) (b) 1. of the statutes is amended to read:

7 ~~46.977 (2) (b) 1. Recruit individuals or organizations to act as guardians for~~
8 ~~persons determined to be~~ individuals found incompetent under ch. 880 54.

9 **SECTION 30.** 46.977 (2) (c) 2. of the statutes is amended to read:

10 ~~46.977 (2) (c) 2. The extent to which the proposed program will effectively~~
11 ~~recruit, train, monitor and assist guardians for persons determined to be~~ individuals
12 found incompetent under ch. 880 54.

INSERT 29-12

13 **SECTION 31.** 48.14 (2) (b) of the statutes is amended to read:

14 48.14 (2) (b) The appointment and removal of a guardian of the person for a
15 child under ss. 48.427, 48.428, 48.43, 48.831, 48.832, 48.839 (4) (a), 48.977, and
16 48.978 and ch. 880 54 and for a child found to be in need of protection or services
17 under s. 48.13 because the child is without parent or guardian.

18 **SECTION 32.** 48.14 (11) of the statutes is amended to read:

19 48.14 (11) Granting visitation privileges under s. ~~880.155~~ 54.56.

20 **SECTION 33.** 48.345 (intro.) of the statutes is amended to read:

21 **48.345 Disposition of child or unborn child of child expectant mother**
22 **adjudged in need of protection or services.** (intro.) If the judge finds that the
23 child is in need of protection or services or that the unborn child of a child expectant
24 mother is in need of protection or services, the judge shall enter an order deciding one
25 or more of the dispositions of the case as provided in this section under a care and

SENATE BILL 391

SECTION 33

1 treatment plan, except that the order may not place any child not specifically found
2 under chs. 46, 49, 51, 54, or 115 and ~~880~~ to be developmentally disabled, mentally
3 ill, or to have a disability specified in s. 115.76 (5) in facilities ~~which~~ that exclusively
4 treat those categories of children, and the court may not place any child expectant
5 mother of an unborn child in need of protection or services outside of the child
6 expectant mother's home unless the court finds that the child expectant mother is
7 refusing or has refused to accept any alcohol or other drug abuse services offered to
8 her or is not making or has not made a good faith effort to participate in any alcohol
9 or other drug abuse services offered to her. The dispositions under this section are
10 as follows:

11 **SECTION 34.** 48.347 (intro.) of the statutes is amended to read:

12 **48.347 Disposition of unborn child of adult expectant mother**
13 **adjudged in need of protection or services.** (intro.) If the judge finds that the
14 unborn child of an adult expectant mother is in need of protection or services, the
15 judge shall enter an order deciding one or more of the dispositions of the case as
16 provided in this section under a care and treatment plan, except that the order may
17 not place any adult expectant mother of an unborn child not specifically found under
18 ch. 51, 54, or 55 ~~or 880~~ to be developmentally disabled or mentally ill in a facility
19 ~~which~~ that exclusively treats those categories of individuals, and the court may not
20 place any adult expectant mother of an unborn child in need of protection or services
21 outside of the adult expectant mother's home unless the court finds that the adult
22 expectant mother is refusing or has refused to accept any alcohol or other drug abuse
23 services offered to her or is not making or has not made a good faith effort to
24 participate in any alcohol or other drug abuse services offered to her. If the judge
25 finds that the unborn child of a child expectant mother is in need of protection or

SENATE BILL 391

1 services, the judge shall enter an order deciding one or more of the dispositions of the
2 case as provided in s. 48.345 under a care and treatment plan. The dispositions
3 under this section are as follows:

4 **SECTION 35.** 48.62 (2) of the statutes is amended to read:

5 48.62 (2) A relative, as defined in s. 48.02 (15) or as specified in s. 49.19 (1) (a),
6 or a guardian of a child, who provides care and maintenance for a child, is not
7 required to obtain the license specified in this section. The department, county
8 department, or licensed child welfare agency as provided in s. 48.75 may issue a
9 license to operate a foster home or a treatment foster home to a relative who has no
10 duty of support under s. 49.90 (1) (a) and who requests a license to operate a foster
11 home or treatment foster home for a specific child who is either placed by court order
12 or who is the subject of a voluntary placement agreement under s. 48.63. The
13 department, a county department, or a licensed child welfare agency may, at the
14 request of a guardian appointed under s. 48.977 or 48.978, ch. 54, or ch. 880, 2003
15 stats., license the guardian's home as a foster home or treatment foster home for the
16 guardian's minor ward who is living in the home and who is placed in the home by
17 court order. Relatives with no duty of support and guardians appointed under s.
18 48.977 or 48.978, ch. 54, or ch. 880, 2003 stats., who are licensed to operate foster
19 homes or treatment foster homes are subject to the department's licensing rules.

20 **SECTION 36.** 48.831 (1) of the statutes is amended to read:

21 48.831 (1) TYPE OF GUARDIANSHIP. This section may be used for the appointment
22 of a guardian of a child who does not have a living parent if a finding as to the
23 adoptability of a child is sought. Except as provided in ss. 48.977 and 48.978, ch. 880
24 54 applies to the appointment of a guardian for a child who does not have a living
25 parent for all other purposes. An appointment of a guardian of the estate of a child

SENATE BILL 391

SECTION 36

1 who does not have a living parent shall be conducted in accordance with the
2 procedures specified in ch. ~~880~~ 54.

3 **SECTION 37.** 48.831 (1m) (e) of the statutes is amended to read:

4 48.831 (1m) (e) A guardian appointed under ch. 54 or ch. 880, 2003 stats.,
5 whose resignation as guardian has been accepted by a court under s. 54.54 (1) or s.
6 880.17 (1), 2003 stats.

7 **SECTION 38.** 48.977 (8) of the statutes is amended to read:

8 48.977 (8) (title) RELATIONSHIP TO CH. 54 AND CH. 880, 2003 STATS. (a) This section
9 does not abridge the duties or authority of a guardian appointed under ch. 54 or ch.
10 880, 2003 stats.

11 (b) Nothing in this section prohibits an individual from petitioning a court
12 under ch. ~~880~~ 54 for appointment of a guardian.

13 **SECTION 39.** 48.978 (7) of the statutes is amended to read:

14 48.978 (7) RELATIONSHIP TO CH. ~~880~~ 54. (a) Except when a different right, remedy
15 or procedure is provided under this section, the rights, remedies, and procedures
16 provided in ch. ~~880~~ 54 shall govern a standby guardianship created under this
17 section.

18 (b) This section does not abridge the duties or authority of a guardian appointed
19 under ch. 54 or ch. 880, 2003 stats.

20 (c) Nothing in this section prohibits an individual from petitioning a court for
21 the appointment of a guardian under ch. ~~880~~ 54.

22 **SECTION 40.** 49.001 (8) of the statutes is amended to read:

23 49.001 (8) “Voluntary” means according to ~~–a person’s~~ an individual’s free
24 choice, if competent, or by choice of ~~–a~~ his or her guardian if the individual is
25 adjudicated incompetent.

SENATE BILL 391

1 **SECTION 41.** 49.498 (3) (a) 1. of the statutes is amended to read:

2 49.498 (3) (a) 1. The right to choose a personal attending physician, to be fully
3 informed in advance about care and treatment, to be fully informed in advance of any
4 changes in care or treatment that may affect the resident's well-being, and, except
5 with respect to a resident ~~found~~ who is adjudicated incompetent under s. 880.33 ~~in~~
6 ~~this state~~, to participate in planning care and treatment or changes in care and
7 treatment.

8 **SECTION 42.** 49.498 (3) (c) of the statutes is amended to read:

9 49.498 (3) (c) For a resident who is ~~found~~ adjudicated incompetent under s.
10 880.33 in this state, the rights of a resident under this subsection devolve upon and,
11 to the extent determined necessary by a court of competent jurisdiction, are exercised
12 by the resident's guardian ~~appointed under s. 880.33~~.

13 **SECTION 43.** 50.02 (2) (ad) of the statutes is created to read:

14 50.02 (2) (ad) The department shall promulgate rules that require each facility
15 licensed under this subchapter to provide information necessary for the department
16 to assess the facility's compliance with s. 55.14.

17 **SECTION 44.** 50.03 (14) (c) 8. e. of the statutes is amended to read:

18 50.03 (14) (c) 8. e. A list of the residents whom the facility believes to be
19 incompetent meet the requirements of s. 54.10 (3).

20 **SECTION 45.** 50.06 (2) (intro.) of the statutes is amended to read:

21 50.06 (2) (intro.) An individual under sub. (3) may consent to admission,
22 directly from a hospital to a facility, of an incapacitated individual who does not have
23 a valid power of attorney for health care and who has not been adjudicated
24 incompetent ~~under ch. 880~~ in this state, if all of the following apply:

25 **SECTION 46.** 50.06 (2) (c) of the statutes is amended to read:

SENATE BILL 391**SECTION 46**

1 50.06 (2) (c) A petition for guardianship for the individual under s. ~~880.07~~ 54.34
2 and a petition for protective placement of the individual under s. 55.06 (2) are filed
3 prior to the proposed admission.

4 **SECTION 47.** 50.09 (3) of the statutes is amended to read:

5 50.09 (3) If the resident is ~~adjudged to be~~ adjudicated incompetent under ~~ch.~~
6 ~~51 or 880 in this state~~ and not restored to legal capacity, the rights and
7 responsibilities established under this section which the resident is not competent
8 to exercise shall devolve upon the resident's guardian.

9 **SECTION 48.** 50.94 (2) (intro.) of the statutes is amended to read:

10 50.94 (2) (intro.) A person who is determined to be incapacitated under the
11 requirements of sub. (8), does not have a valid living will or valid power of attorney
12 for health care, and has not been adjudicated incompetent ~~under ch. 880~~ in this state
13 may be admitted to a hospice under this section only if all of the following
14 requirements are met:

15 **SECTION 49.** 50.94 (6) of the statutes is amended to read:

16 50.94 (6) A person who disagrees with a hospice decision made under this
17 section may apply under ~~ch. 880~~ s. 54.50 for temporary guardianship of the person
18 who is incapacitated. In applying for the temporary guardianship, such a person has
19 the burden of proving that the person who is incapacitated would not have consented
20 to admission to a hospice or hospice care.

21 **SECTION 50.** 51.01 (4g) of the statutes is created to read:

22 51.01 (4g) "County of residence" means the county that is determined under
23 s. 51.40 to be the county of residence.

24 **SECTION 51.** 51.01 (4r) of the statutes is created to read:

SENATE BILL 391

1 51.01 (4r) “Degenerative brain disorder” means the loss or dysfunction of brain
2 cells to the extent that the individual is substantially impaired in his or her ability
3 to provide adequately for his or her own care or custody or to manage adequately his
4 or her property or financial affairs.

5 **SECTION 52.** 51.01 (5) (a) of the statutes is amended to read:

6 51.01 (5) (a) “Developmental disability” means a disability attributable to
7 brain injury, cerebral palsy, epilepsy, autism, Prader-Willi syndrome, mental
8 retardation, or another neurological condition closely related to mental retardation
9 or requiring treatment similar to that required for mental retardation, which has
10 continued or can be expected to continue indefinitely and constitutes a substantial
11 handicap to the afflicted individual. “Developmental disability” does not include
12 ~~senility which~~ ^{dementia} that is primarily caused by the process of aging or the infirmities of
13 aging ~~degenerative brain disorder as defined in s. 55.01 (14).~~

14 **SECTION 53.** 51.01 (14) of the statutes is amended to read:

15 51.01 (14) “Residence”, ~~“legal residency” or “county of residence”~~ has the
16 meaning given under s. 49.001 (6).

17 **SECTION 54.** 51.01 (14t) of the statutes is created to read:

18 51.01 (14t) “Serious and persistent mental illness” means a mental illness that
19 is severe in degree and persistent in duration, that causes a substantially diminished
20 level of functioning in the primary aspects of daily living and an inability to cope with
21 the ordinary demands of life, that may lead to an inability to maintain stable
22 adjustment and independent functioning without long-term treatment and support,
23 and that may be of lifelong duration. “Serious and persistent mental illness” includes
24 schizophrenia as well as a wide spectrum of psychotic and other severely disabling

SENATE BILL 391

SECTION 54

1 psychiatric diagnostic categories, but does not include degenerative brain disorder
2 or a primary diagnosis of a developmental disability or of alcohol or drug dependence.

3 **SECTION 55.** 51.03 (3) (a) 6. of the statutes is amended to read:

4 51.03 (3) (a) 6. The number of persons authorized to consent to involuntary
5 administration of psychotropic medication under s. 55.14 (8) or for whom guardians
6 are were appointed under s. 880.33 (4m), 2003 stats.

7 **SECTION 56.** 51.05 (2) of the statutes is amended to read:

8 51.05 (2) ADMISSIONS AUTHORIZED BY COUNTIES. The department may not accept
9 for admission to a mental health institute any resident person, except in an
10 emergency, unless the county department under s. 51.42 in the county where the
11 person has ~~legal residency~~ residence authorizes the care, as provided in s. 51.42 (3)
12 (as). Patients who are committed to the department under s. 975.01, 1977 stats., or
13 s. 975.02, 1977 stats., or s. 971.14, 971.17, 975.06 or 980.06, admitted by the
14 department under s. 975.17, 1977 stats., or are transferred from a secured
15 correctional facility, a secured child caring institution or a secured group home to a
16 state treatment facility under s. 51.35 (3) or from a jail or prison to a state treatment
17 facility under s. 51.37 (5) are not subject to this section.

18 **SECTION 57.** 51.10 (8) of the statutes is amended to read:

19 51.10 (8) An adult for whom a guardian of the person has been appointed ~~under~~
20 ~~ch. 880 in this state~~ because of the subject's incompetency may be voluntarily
21 admitted to an inpatient treatment facility under this section only if the guardian
22 and the ward consent to such admission.

23 **SECTION 58.** 51.20 (7) (d) 1. (intro.) of the statutes is renumbered 51.20 (7) (d)
24 1. and amended to read:

SENATE BILL 391

1 51.20 (7) (d) 1. If the court determines after hearing that there is probable cause
2 to believe that the subject individual is a fit subject for guardianship and protective
3 placement or services, the court may, without further notice, appoint a temporary
4 guardian for the subject individual and order temporary protective placement or
5 services under ch. 55 for a period not to exceed 30 days, and shall proceed as if
6 petition had been made for guardianship and protective placement or services. If the
7 court orders only temporary protective services for a subject individual under this
8 paragraph, the individual shall be provided care only on an outpatient basis. The
9 court may order involuntary administration of psychotropic medication as a
10 temporary protective service ~~under this paragraph if it finds that there is probable~~
11 ~~cause to believe that the allegations under s. 880.07 (1m) (e) and (cm) apply, that the~~
12 ~~individual is not competent to refuse psychotropic medication and that the~~
13 ~~medication ordered will have therapeutic value and will not unreasonably impair the~~
14 ~~ability of the individual to prepare for and participate in subsequent legal~~
15 ~~proceedings. An individual is not competent to refuse psychotropic medication if,~~
16 ~~because of chronic mental illness, and after the advantages and disadvantages of and~~
17 ~~alternatives to accepting the particular psychotropic medication have been~~
18 ~~explained to the individual, one of the following is true: only under the requirements~~
19 ~~of s. 55.14.~~

20 **SECTION 59.** 51.20 (7) (d) 1. a. of the statutes is repealed.

21 **SECTION 60.** 51.20 (7) (d) 1. b. of the statutes is repealed.

22 **SECTION 61.** 51.20 (13) (g) 4. of the statutes is created to read:

23 51.20 (13) (g) 4. The county department under s. 51.42 or 51.437 to which the
24 individual is committed under par. (a) 3. retains financial responsibility for the
25 individual if the individual voluntarily moves to another county until venue for the

SENATE BILL 391

SECTION 61

1 individual is transferred to the county in which the individual is physically present
2 or until the individual is no longer a proper subject of continued commitment.

3 **SECTION 62.** 51.22 (4) of the statutes is amended to read:

4 51.22 (4) If a patient is placed in a facility authorized by a county department
5 under s. 51.42 or 51.437 and ~~such~~ the placement is outside the jurisdiction of that
6 county department under s. 51.42 or 51.437, the placement does not transfer the
7 patient's legal residence to the county of the facility's location while such patient is
8 under commitment or placement.

9 **SECTION 63.** 51.30 (4) (b) 8m. of the statutes is amended to read:

10 51.30 (4) (b) 8m. To appropriate examiners and facilities in accordance with s.
11 54.36 (3), 971.17 (2) (e), (4) (c) and (7) (c), 980.03 (4) or 980.08 (3). The recipient of
12 any information from the records shall keep the information confidential except as
13 necessary to comply with s. 971.17 or ch. 980.

14 **SECTION 64.** 51.30 (4) (b) 18. a. of the statutes is amended to read:

15 51.30 (4) (b) 18. a. In this subdivision, "abuse" has the meaning given in s. 51.62
16 (1) (ag); "neglect" has the meaning given in s. 51.62 (1) (br); and "parent" has the
17 meaning given in s. 48.02 (13), except that "parent" does not include the parent of a
18 minor whose custody is transferred to a legal custodian, as defined in s. 48.02 (11),
19 or for whom a guardian is appointed under s. 54.10 or s. 880.33, 2003 stats.

20 **SECTION 65.** 51.30 (4) (b) 18. c. of the statutes is amended to read:

21 51.30 (4) (b) 18. c. If the patient, regardless of age, has a guardian appointed
22 under s. 54.10 or s. 880.33, 2003 stats., or if the patient is a minor with developmental
23 disability who has a parent or has a guardian appointed under s. 48.831 and does not
24 have a guardian appointed under s. 54.10 or s. 880.33, 2003 stats., information
25 concerning the patient that is obtainable by staff members of the agency or nonprofit

SENATE BILL 391

1 corporation with which the agency has contracted is limited, except as provided in
2 subd. 18. e., to the nature of an alleged rights violation, if any; the name, birth date
3 and county of residence of the patient; information regarding whether the patient
4 was voluntarily admitted, involuntarily committed or protectively placed and the
5 date and place of admission, placement or commitment; and the name, address and
6 telephone number of the guardian of the patient and the date and place of the
7 guardian's appointment or, if the patient is a minor with developmental disability
8 who has a parent or has a guardian appointed under s. 48.831 and does not have a
9 guardian appointed under s. 54.10 or s. 880.33, 2003 stats., the name, address and
10 telephone number of the parent or guardian appointed under s. 48.831 of the patient.

11 **SECTION 66.** 51.30 (4) (b) 20. (intro.) of the statutes is amended to read:

12 51.30 (4) (b) 20. (intro.) Except with respect to the treatment records of a
13 subject individual who is receiving or has received services for alcoholism or drug
14 dependence, to the spouse, parent, adult child or sibling of a subject individual, if the
15 spouse, parent, adult child or sibling is directly involved in providing care to or
16 monitoring the treatment of the subject individual and if the involvement is verified
17 by the subject individual's physician, psychologist or by a person other than the
18 spouse, parent, adult child or sibling who is responsible for providing treatment to
19 the subject individual, in order to assist in the provision of care or monitoring of
20 treatment. Except in an emergency as determined by the person verifying the
21 involvement of the spouse, parent, adult child or sibling, the request for treatment
22 records under this subdivision shall be in writing, by the requester. Unless the
23 subject individual has been ~~adjudged~~ adjudicated incompetent ~~under ch. 880 in this~~
24 state, the person verifying the involvement of the spouse, parent, adult child or
25 sibling shall notify the subject individual about the release of his or her treatment

SENATE BILL 391

SECTION 66

1 records under this subdivision. Treatment records released under this subdivision
2 are limited to the following:

3 **SECTION 67.** 51.30 (4) (dm) 2. of the statutes is amended to read:

4 51.30 (4) (dm) 2. Conceal or withhold a treatment record with intent to prevent
5 its release to the subject individual under par. (d), to his or her guardian appointed
6 ~~under ch. 880,~~ or to persons with the informed written consent of the subject
7 individual or with intent to prevent or obstruct an investigation or prosecution.

8 **SECTION 68.** 51.30 (4) (f) of the statutes is amended to read:

9 51.30 (4) (f) *Correction of information.* A subject individual, or the parent,
10 guardian, or person in the place of a parent of a minor, or the guardian of an
11 individual adjudicated incompetent may, after having gained access to treatment
12 records, challenge the accuracy, completeness, timeliness, or relevance of factual
13 information in his or her treatment records and request in writing that the facility
14 maintaining the record correct the challenged information. ~~Such~~ The request shall
15 be granted or denied within 30 days by the director of the treatment facility, the
16 director of the county department under s. 51.42 or 51.437, or the secretary
17 depending upon which person has custody of the record. Reasons for denial of the
18 requested changes shall be given by the responsible officer and the individual shall
19 be informed of any applicable grievance procedure or court review procedure. If the
20 request is denied, the individual, parent, guardian, or person in the place of a parent
21 shall be allowed to insert into the record a statement correcting or amending the
22 information at issue. The statement shall become a part of the record and shall be
23 released whenever the information at issue is released.

24 **SECTION 69.** 51.30 (5) (a) of the statutes is amended to read:

SENATE BILL 391

1 51.30 (5) (a) *Consent for release of information.* The parent, guardian, or person
2 in the place of a parent of a minor or the guardian of an adult ~~adjudged~~ adjudicated
3 incompetent ~~under ch. 880 in this state~~ may consent to the release of confidential
4 information in court or treatment records. A minor who is aged 14 or more may
5 consent to the release of confidential information in court or treatment records
6 without the consent of the minor's parent, guardian or person in the place of a parent.
7 Consent under this paragraph must conform to the requirements of sub. (2).

8 **SECTION 70.** 51.30 (5) (b) 1. of the statutes is amended to read:

9 51.30 (5) (b) 1. The guardian of an individual who is ~~adjudged~~ adjudicated
10 incompetent ~~under ch. 880 in this state~~ shall have access to the individual's court and
11 treatment records at all times. The parent, guardian or person in the place of a
12 parent of a developmentally disabled minor shall have access to the minor's court and
13 treatment records at all times except in the case of a minor aged 14 or older who files
14 a written objection to such access with the custodian of the records. The parent,
15 guardian or person in the place of a parent of other minors shall have the same rights
16 of access as provided to subject individuals under this section.

17 **SECTION 71.** 51.30 (5) (e) of the statutes is amended to read:

18 51.30 (5) (e) *Temporary guardian for adult alleged to be incompetent.* If an
19 adult is ~~believed~~ alleged to be incompetent, under the requirements of s. 54.10 (3),
20 to consent to the release of records under this section, but no guardian has been
21 appointed for ~~such~~ the individual, consent for the release of records may be given by
22 a temporary guardian who is appointed for the purpose of deciding upon the release
23 of records.

24 **SECTION 72.** 51.35 (7) of the statutes is amended to read:

SENATE BILL 391

SECTION 72

1 51.35 (7) GUARDIANSHIP AND PROTECTIVE SERVICES. Prior to discharge from any
2 state treatment facility, the department shall review the possible need of a
3 developmentally disabled individual, aged infirm individual, or ~~person~~ individual
4 with other like incapacities for protective services or protective placement under ch.
5 55 after discharge, including the necessity for appointment of a guardian ~~or limited~~
6 guardian. The department shall petition for ~~limited or full~~ guardianship, or for
7 protective services or protective placement for the person if needed. When the
8 department makes a petition for guardianship under this subsection, it shall not be
9 appointed as guardian.

10 SECTION 73. 51.40 (title) of the statutes is amended to read:

11 51.40 (title) ~~Residence of developmentally disabled or chronically~~
12 ~~mentally ill~~ **Determination of residence for certain adults; county of**
13 **responsibility.**

14 SECTION 74. 51.40 (1) (e) of the statutes is amended to read:

15 51.40 (1) (e) “County of responsibility” means the county responsible for
16 funding the provision of care, treatment, or services under this chapter or ch. 46 or
17 55 to an individual.

18 SECTION 75. 51.40 (1) (em) of the statutes is created to read:

19 51.40 (1) (em) “Facility” means a place, other than a hospital, that is licensed,
20 registered, certified, or approved by the department or a county under ch. 50 or 51.

21 SECTION 76. 51.40 (1) (f) of the statutes is amended to read:

22 51.40 (1) (f) “Guardian” means a guardian of the person appointed by a court
23 under ch. 54 or ch. 880, 2003 stats.

24 SECTION 77. 51.40 (1) (g) 1. of the statutes is amended to read:

SENATE BILL 391

1 51.40 (1) (g) 1. The status of an individual who has had a guardian appointed
2 ~~under ch. 880, unless the court made a specific finding under s. 880.33 (3) that the~~
3 ~~individual is competent to make an informed choice of a place to live.~~

4 **SECTION 78.** 51.40 (1) (h) of the statutes is repealed.

5 **SECTION 79.** 51.40 (1) (hm) of the statutes is created to read:

6 51.40 (1) (hm) “Other like incapacities” has the meaning given in s. 55.01 (5).

7 **SECTION 80.** 51.40 (1) (m) of the statutes is created to read:

8 51.40 (1) (m) “Voluntary” has the meaning given in s. 49.001 (8).

9 **SECTION 81.** 51.40 (2) (intro.) of the statutes is amended to read:

10 51.40 (2) DETERMINATION OF COUNTY OF RESIDENCE. (intro.) ~~For purposes of~~
11 ~~determining responsibility for funding the provision of services under chs. 46, 51 and~~
12 ~~55, the~~ The county of residence of individuals an individual aged 18 or older with
13 ~~developmental disability or chronic serious and persistent mental illness in state~~
14 ~~facilities or nursing homes, degenerative brain disorder, or other like incapacity who~~
15 ~~is residing in a facility is the county of responsibility for the individual. The county~~
16 of residence shall be determined as follows:

17 **SECTION 82.** 51.40 (2) (a) 1. of the statutes is amended to read:

18 51.40 (2) (a) 1. ‘Commitment or ~~protection~~ protective placement or protective
19 services.’ If an individual is under a court order of commitment under this chapter
20 or protective placement or protective services under s. 55.06, the individual remains
21 a resident of the county in which he or she has residence at the time the initial
22 commitment or initial order for protective placement or protective services is made.
23 If the court makes no specific finding of a county of residence, the individual is a
24 resident of the county in which the court is located. After notice, including notice to
25 the corporation counsel of each affected county by certified mail, after opportunity

SENATE BILL 391**SECTION 82**

1 to be heard has been provided to all affected counties and parties, and if there is no
2 objection, the court may make a specific finding of a county of residence. If any
3 affected county or party objects to the court's proposed finding, the county or party
4 may request the department to make a determination under par. (g). Any transfer
5 of venue may be suspended until the department's determination is final.

6 **SECTION 83.** 51.40 (2) (a) 2. of the statutes is amended to read:

7 51.40 (2) (a) 2. 'Placement by a county.' Except for the provision of emergency
8 services under s. 51.15, 51.42 (1) (b), 51.437 (4) (c), 51.45 (11) and (12) or 55.06 (11),
9 if a county department or an agency of a county department ~~arranges places or~~
10 ~~makes arrangements for~~ placement of the individual into a state facility ~~or nursing~~
11 ~~home~~, the individual is a resident of the county of that county department. Any
12 agency of the county department is deemed to be acting on behalf of the county
13 department in ~~arranging placing or making arrangements for~~ placement.
14 Placement of an individual by a county department or an agency of a county
15 department in a facility outside the jurisdiction of the county department or agency
16 does not transfer the individual's legal residence to the county in which the facility
17 is located. If a resident of a county is physically present in another county and is in
18 need of immediate care, the county in which the individual is present may provide
19 for his or her immediate needs under s. 51.15, 51.20, 51.42 (1) (b), 51.437 (4) (c), or
20 51.45 (11) or (12), or ch. 54 or 55, without becoming the individual's county of
21 residence.

22 **SECTION 84.** 51.40 (2) (b) (intro.) of the statutes is amended to read:

23 51.40 (2) (b) *Other admissions.* (intro.) If par. (a) does not apply, ~~one of the~~
24 following shall apply the county of residence shall be determined as follows:

25 **SECTION 85.** 51.40 (2) (b) 1. of the statutes is amended to read:

SENATE BILL 391

1 51.40 (2) (b) 1. ‘Individuals in state facilities.’ An individual who is in a state
2 facility is a resident of the county in which he or she was a resident at the time the
3 admission to the state facility was made. This subdivision may not be applied to
4 change residence from a county, other than the county in which the facility is located,
5 which that has accepted responsibility for or provided services to the individual prior
6 to ~~August 1, 1987~~ before the effective date of this subdivision [revisor inserts date].

7 **SECTION 86.** 51.40 (2) (b) 2. (intro.) of the statutes is amended to read:

8 51.40 (2) (b) 2. ‘Individuals in nursing homes.’ (intro.) The following are
9 presumptions regarding the county of residence of an individual in a nursing home
10 that may be overcome by substantial evidence that clearly establishes other county
11 residence:

12 ag. An individual in a nursing home who was admitted under s. 50.04 (2r) to
13 the nursing home ~~on or after August 1, 1987~~ the effective date of this subd. 2. ag.
14 [revisor inserts date], is a resident of the county ~~which~~ that approved the admission
15 under s. 50.04 (2r).

16 bg. An individual residing in a nursing home on ~~August 1, 1987~~ the effective
17 date of this subd. 2. bg. [revisor inserts date], is ~~presumed to be~~ a resident of the
18 county in which the individual is physically present unless another county accepts
19 the individual as a resident. ~~The presumption of residence may be overcome by~~
20 ~~substantial evidence which clearly establishes residence in another county in one of~~
21 ~~the following ways:~~

22 **SECTION 87.** 51.40 (2) (b) 2. a. of the statutes is renumbered 51.40 (2) (b) 2. cg.
23 and amended to read:

24 51.40 (2) (b) 2. cg. ~~The~~ If the individual had an established residence in another
25 county prior to entering the nursing home; the individual or the individual’s

SENATE BILL 391

SECTION 87

1 guardian, if any, indicates an intent that the individual will return to that county
2 when the purpose of entering the nursing home has been accomplished or when
3 needed care and services can be obtained in ~~the other~~ that county; and the individual,
4 when capable of indicating intent, or a guardian for the individual, has made no
5 clearly documented expression to a court or county department of an intent to
6 establish residence elsewhere since leaving that county, the individual is a resident
7 of that county.

8 **SECTION 88.** 51.40 (2) (b) 2. b. of the statutes is renumbered 51.40 (2) (b) 2. dg.
9 and amended to read:

10 51.40 (2) (b) 2. dg. ~~The~~ If the individual is incapable of indicating intent as
11 determined by the county department, has no guardian, ordinarily resides in
12 another county, and is expected to return to that county within one year, the
13 individual is a resident of that county.

14 **SECTION 89.** 51.40 (2) (b) 2. c. of the statutes is renumbered 51.40 (2) (b) 2. eg.
15 and amended to read:

16 51.40 (2) (b) 2. eg. ~~Another~~ If another county has accepted responsibility for or
17 provided services to the individual prior to ~~August 1, 1987~~ the effective date of this
18 subd. 2. eg. [revisor inserts date], the individual is a resident of that county.

19 **SECTION 90.** 51.40 (2) (b) 2. d. of the statutes is renumbered 51.40 (2) (b) 2. fg.
20 and amended to read:

21 51.40 (2) (b) 2. fg. ~~The~~ If the individual is incapable of indicating intent; the
22 individual was living in another county outside of a nursing home or state facility on
23 ~~December 1, 1982~~ the effective date of this subd. 2. fg. [revisor inserts date], or
24 under circumstances which that established residence in that county after ~~December~~
25 1, 1982 the effective date of this subd. 2. fg. [revisor inserts date]; and that county

SENATE BILL 391

1 was the last county in which the individual had residence while living outside of a
2 nursing home or state facility, the individual is a resident of that county.

3 **SECTION 91.** 51.40 (2) (b) 2. g. of the statutes is created to read:

4 51.40 (2) (b) 2. g. If subd. 2. ag. to fg. does not apply, an individual who is
5 incapable of indicating intent and is residing in a facility is a resident of the county
6 in which the individual resided before admittance to the facility.

7 **SECTION 92.** 51.40 (2) (f) of the statutes is repealed and recreated to read:

8 51.40 (2) (f) *Guardian's authority to declare county of residence.* A guardian
9 may declare any of the following, under any of the following conditions:

10 1. The ward is a resident of the guardian's county of residence, if pars. (a) and
11 (b) do not apply, if the guardian's ward is in a facility and is incapable of indicating
12 intent, and if the guardian is a resident of the county in which the facility is located
13 or states in writing that the ward is expected to return to the guardian's county of
14 residence when the purpose of entering the facility has been accomplished or when
15 needed care and services can be obtained in the guardian's county of residence.

16 2. The ward is a resident of the county in which the ward is physically present,
17 if pars. (a) and (b) do not apply and if all of the following apply:

18 a. The ward's presence in the county is voluntary.

19 b. There is no current order under ch. 55 in effect with respect to the ward, and
20 the ward is not under an involuntary commitment order to the department of
21 corrections or to a county other than the county in which the ward is physically
22 present.

23 c. The ward is living in a place of fixed habitation.

24 d. The guardian states in writing that it is the ward's intent to remain in the
25 county for the foreseeable future.

SENATE BILL 391

SECTION 92

1 3. The ward is a resident of the county specified by the guardian, regardless if
2 a previous determination of county of residence has been made, notwithstanding
3 pars. (a) and (b) for good cause shown, if, in the ward's best interest, the guardian files
4 with the probate court having jurisdiction of the guardianship and protective
5 placement a written statement declaring the ward's domiciliary intent, subject to
6 court approval, and if notice and opportunity to be heard are provided to all affected
7 counties and parties. Notice under this subdivision shall be sent to the corporation
8 counsel of each affected county by certified mail.

9 **SECTION 93.** 51.40 (2) (g) 1. of the statutes is amended to read:

10 51.40 (2) (g) 1. An individual, an interested person on behalf of the individual,
11 or any county may request that the department make a determination of the county
12 of responsibility of the individual. Any motion for change of venue pending before
13 the court of jurisdiction may be stayed until the determination under this paragraph
14 is final. Within 10 days after receiving the request, the department shall provide
15 written notice to the individual; to the individual's guardian, guardian ad litem, and
16 counsel, if any; to the individual's immediate family, if they can be located; and to all
17 potentially responsible counties that a determination of county of responsibility
18 shall be made and that written information and comments may be submitted within
19 30 days after the date on which the notice is sent.

20 **SECTION 94.** 51.40 (2) (g) 6. of the statutes is created to read:

21 51.40 (2) (g) 6. The county that is determined to be the county of responsibility
22 shall reimburse any other county for all care, treatment, and services provided by the
23 other county to the individual under ch. 46, 51, or 55. Full reimbursement by the
24 county that is determined to be the county of responsibility shall be made within 120
25 days after the date of the department's determination of the county of responsibility

SENATE BILL 391

1 or within 120 days after the date of the outcome of any appeal of the department's
2 determination that is brought under ch. 227, or by a date or under a schedule of 2 or
3 more payments that is agreed to by both counties.

4 **SECTION 95.** 51.45 (2) (e) of the statutes is amended to read:

5 51.45 (2) (e) "Incompetent person" means a person who has been adjudged
6 incompetent by the circuit court, as defined in s. 54.01 (4).

7 **SECTION 96.** 51.45 (10) (a) of the statutes is amended to read:

8 51.45 (10) (a) An adult alcoholic may apply for voluntary treatment directly to
9 an approved public treatment facility. If the proposed patient is an individual
10 adjudicated incompetent person in this state who has not been deprived by a court
11 of the right to contract ~~under subch. I of ch. 880, the person~~ individual or ~~a legal~~ his
12 or her guardian or other legal representative may make the application. If the
13 proposed patient is an individual adjudicated incompetent person in this state who
14 has been deprived by a court of the right to contract ~~under subch. I of ch. 880, a legal,~~
15 the individual's guardian or other legal representative may make the application.

16 **SECTION 97.** 51.45 (10) (c) of the statutes is amended to read:

17 51.45 (10) (c) If a patient receiving inpatient care leaves an approved public
18 treatment facility, the patient shall be encouraged to consent to appropriate
19 outpatient or intermediate treatment. If it appears to the superintendent in charge
20 of the treatment facility that the patient is an alcoholic or intoxicated person who
21 requires help, the county department shall arrange for assistance in obtaining
22 supportive services and residential facilities. If the patient is an individual who is
23 adjudicated incompetent person, the request for discharge from an inpatient facility
24 shall be made by a legal guardian or other legal representative or by the individual
25 who is adjudicated incompetent if he or she was the original applicant.